

# New Orleans Utilities Regulation

Final Report • June 17, 2015



**NEW ORLEANS OFFICE OF  
INSPECTOR GENERAL**

E. R. Quatrevaux, Inspector General

OFFICE OF INSPECTOR GENERAL  
**CITY OF NEW ORLEANS**



ED QUATREVAUX  
INSPECTOR GENERAL

May 13, 2015

**RE: New Orleans Utilities Regulation**

I certify that the OIG and TBG personnel assigned to this project are free of personal or other external impairments to independence.

A handwritten signature in blue ink that reads "E.R. Quatrevaux".

E.R. Quatrevaux  
Inspector General

# New Orleans Utilities Regulation

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### Glossary of Acronyms

ALJ	Administrative Law Judge
B&T	Bruno & Tervalon
CDBG	Community Development Block Grants
CURO	Council Utilities Regulatory Office
EAI	Entergy Arkansas
EGSL	Entergy Gulf States Louisiana
ELL	Entergy Louisiana
EMI	Entergy Mississippi
ENO	Entergy New Orleans
ERSC	Entergy Regional State Committee
ETI	Entergy Texas
FERC	Federal Energy Regulatory Commission
FRP	Formula Rate Plan
IRP	Integrated Resource Planning
ITC	ITC Holdings Corporation
LP&L	Louisiana Power & Light
LPSC	Louisiana Public Service Commission
MISO	Midcontinent Independent System Operator
NASUCA	National Association of State Utility Consumer Advocates
NOPSI	New Orleans Public Service, Inc.
PML	Paillet, Meunier, & LeBlanc
RAP	Regulatory Assistance Project
RFP	Request for Proposals
RPCE	Rough Production Cost Equalization
RFQ	Request for Qualifications
TBG	TBG Consulting
UCTTC	Utility, Cable, Telecommunications and Technology Committee

## EXECUTIVE SUMMARY

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The Office of Inspector General of the City of New Orleans (OIG) retained TBG Consulting (TBG) to perform a detailed assessment of utilities regulation in New Orleans.<sup>1</sup> New Orleans is the only city in the United States to regulate an investor-owned energy utility when there is a state-level agency in place. The Home Rule Charter empowers the New Orleans City Council (Council) with the authority to grant franchises, set rates, and exercise regulatory control over utilities operating in Orleans Parish. Regulatory decisions made by the Council not only affect the utilities but every resident, business, and governmental entity in New Orleans. These entities' competing interests makes measuring the effectiveness of regulation by any single metric (e.g., residential customer rates) inappropriate. Ultimately, the goal of utility regulation is to advance the overall public interest in both the short and long term.

During the course of this project, new members were elected to the Council and the composition of the Council's Utilities Committee changed and expanded. However, the core regulatory framework analyzed in this report did not change.

The purpose of this review was to answer several questions:

- Are utility customers in New Orleans best served by the city's unique regulatory authority? Or, would the Louisiana Public Service Commission (LPSC) be a more appropriate regulator for the city's energy utilities?
- How does the Council deploy its regulatory resources?
- Are the Council's regulatory processes designed to maximize effectiveness and transparency?

TBG/OIG found that despite the potential for lower regulatory costs by a shift to LPSC regulation, the interests of the city's utility customers would likely be underrepresented. Ongoing changes to the Entergy system (i.e., dissolution of the System Agreement and shift to a regional transmission organization) could have significant consequences for the city's utility

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<sup>1</sup> TBG's President is a nationally renowned expert with over four decades of experience helping regulatory agencies improve their effectiveness.

customers.<sup>2</sup> In addition, a previous attempt to shift regulatory authority to the LPSC resulted in the LPSC allocating more shared costs to the city's utility customers than the Council recommended prior to the regulatory transfer. For these reasons, the report concluded that it is in the public interest for the Council to continue as the regulator of the city's investor-owned energy utilities until there is further clarity on how the changes to the Entergy system will impact the city's utility customers.

The report identified several areas of concern in terms of how the city's energy utilities are regulated. TBG/OIG found that the Council carried out its regulatory responsibilities by relying almost exclusively on outside consultants. The issue is not whether the Council should use outside consultants; the issue is whether the Council should use outside consultants for everything. Regulatory commissions across the country use a mix of internal and external resources. However, 96 percent of the Council's \$7.2 million regulatory budget for 2013 was allocated to a group of outside consultants.

The Council's wholly outsourced approach resulted in higher than necessary regulatory costs because many activities could have been performed by a well-trained in-house staff at a lower cost. For example, four attorneys retained by the Council billed approximately \$2.4 million per year between 2011 and 2013 and four technical consultants billed approximately \$1.4 million per year during the same period indicating that a significant volume of work was being performed on an ongoing basis. Although many of the consultants' activities focused on highly specialized regulatory issues, several tasks were routine and are typically handled by in-house staff at other regulatory commissions. Ultimately, these costs were paid by the city's utility customers. Beyond cost, the Council's overreliance on outside consultants prevented the development of in-house expertise and institutional knowledge regarding critical regulatory matters.

The regulatory process in New Orleans relied on a limited number of participants and was largely driven by the efforts of outside consultants on behalf of the Council. Participation by non-Council entities is important as it adds independence to the regulatory process and provides checks and balances to the regulatory framework. The interests of residential and small business customers were not represented by a publicly-funded public advocate with adequate resources.

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<sup>2</sup> The System Agreement is contract that governs the operation of the individual Entergy companies as a single power pool to capture the economic efficiencies of a larger system.

Further, the Executive Branch did not fulfill its regulatory responsibilities (i.e., recommending rates and performing investigations of utilities): the City eliminated the Department of Utilities in 2002. In the absence of participation by the Executive Branch, the nonexistence of a publicly-funded public advocate, and the lack of in-house Council regulatory staff, outside consultants fulfilled both roles in the regulatory process (i.e., trial and advisory). This dual role meant that the findings and recommendations made by the outside consultants went mostly unchecked.

TBG/OIG found that the Council's regulatory approach and practices lacked basic controls to ensure transparency, prevent misconduct, and promote effective decision-making. For example, Councilmembers were permitted to engage in verbal ex parte communications with the utility and other intervenors. This practice had the potential to introduce bias and errors into the regulatory process because these off-the-record conversations go unchallenged and can have a disproportionate impact on regulatory decisions. The lack of transparency was further exacerbated by the Council's use of settlements to resolve nearly all regulatory matters and the resulting lack of publicly available documentation to understand how and why decisions were made.

The recommendations presented in the report are intended to provide the Council and the City's Executive Branch with ways to improve local utilities regulation, including increasing the number of participants with defined roles in the regulatory process, building in-house capacity while reducing the reliance on outside consultants, and implementing safeguards to protect the integrity of the regulatory process and promote effective decision-making. Specifically, TBG/OIG recommended the following:

- The Council should improve how it uses its resources by building in-house capacity to carry out routine regulatory functions and use outside consultants as needed for specialized activities. Some of the contracts with the outside consultants should be reduced and some of the contracts should be eliminated. The Council can fund an expansion of its in-house staff by using various assessments and cost recovery mechanisms outlined in the City Code.
- The number of participants should be increased to add checks and balances by separating the various duties fulfilled by each party. This could be accomplished by expanding the Council's internal resources and the Executive Branch fulfilling its regulatory responsibilities related to recommending rates and performing investigations of the utilities. In addition, the Executive Branch could fulfill some of its regulatory

- responsibilities by creating a publicly-funded public advocate function to represent residential and small business utility customers.
- The Council should improve the safeguards in place to protect the integrity of the regulatory process. This includes strengthening ex parte rules to prevent off-the-record conversations between stakeholders and decision-makers, separating the roles fulfilled by the outside consultants (i.e., trial and advisory), and empowering an administrative law judge (ALJ) to make recommendations on disputed matters within the Council's regulatory jurisdiction. In addition, the Council should develop and implement an electronic filing system and post documents and information related to regulatory matters on an enhanced website.

Increasing the number of participants with clearly defined roles and imposing meaningful ex parte restrictions would add balance and independence to the City's regulatory process. Improvements to the Council's use of regulatory resources would lower regulatory costs and provide an opportunity for in-house personnel to gain institutional knowledge regarding critical regulatory matters. These modifications would increase the likelihood that regulatory decisions made by the Council effectively align the overall public interest and private interests.

## I. PROJECT OVERVIEW

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The New Orleans Office of Inspector General (OIG) issued a request for proposals (RFP) to obtain technical assistance from a qualified consultant with expertise in the field of utilities regulation. The consultant would provide a detailed assessment of the strengths and weaknesses of the City's regulatory model for energy utilities and make recommendations to serve the interests of energy customers in New Orleans.<sup>3</sup> The project had three main objectives: determine who should be the regulator of gas/electric services in New Orleans (e.g., the City Council or Louisiana Public Service Commission), review how the Council used regulatory resources, and evaluate the Council's regulatory processes.<sup>4</sup>

The OIG received five proposals in response to the RFP, and an evaluation committee selected TBG Consulting (TBG) as most advantageous. TBG is a sole proprietorship located in Pennsylvania with David Magnus Boonin as its founder and President. Mr. Boonin has over four decades of experience in helping regulatory agencies improve their effectiveness.<sup>5</sup>

TBG gathered information for this project by conducting interviews and reviewing documents and data.<sup>6</sup> Interviews for this project took place during late 2013 and early 2014. During the course of this project, new members have been elected to the Council and the composition of the Council's Utilities Committee has changed and expanded. Although the Council has made some changes during this period, the core regulatory framework analyzed in this report is still in place.

TBG acknowledges that some the recommendations in this report involve legal matters and/or procedures. TBG is not providing legal advice, rather the advice of an expert on utility regulation. TBG requested legal opinions from the City Attorney on specific legal matters; however, none were provided. As a result, TBG relied on the plain reading of sections of law

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<sup>3</sup> Funding for engaging the consultant on this project was provided by a private foundation. The OIG and TBG had full control of this project and the foundation did not influence or review the project's work plan, analysis, findings, or recommendations.

<sup>4</sup> The scope of services contained within the RFP also sought analyses related to rates and reliability. TBG performed these analyses but found them to be ancillary to the primary focus of this evaluation. They will be available on the OIG website.

<sup>5</sup> For additional information, Mr. Boonin's biography can be found in Appendix A of this report or [www.TBG-Consulting.com](http://www.TBG-Consulting.com).

<sup>6</sup> TBG and OIG interviewed current and former Councilmembers, the Advisors, Council staff, personnel from Entergy, personnel from the Louisiana Public Service Commission, the City Attorney, members of the City's Executive Branch, the Alliance for Affordable Energy, and the Regulatory Assistance Project.

provided by the City Attorney. TBG did not comment on specific decisions made by any regulatory body.

The OIG provided project oversight, including developing evaluation objectives, reviewing and approving TBG's evaluation plan, determining milestones, and reviewing analyses. OIG evaluators coordinated and participated in interviews and processed data requests. The information contained in this report meets the standards outlined in *Principles and Standards for Offices of Inspector General for Inspections, Evaluations, and Reviews*.<sup>7</sup>

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<sup>7</sup> "Quality Standards for Inspections, Evaluations, and Reviews by Offices of Inspector General," *Principles and Standards for Offices of Inspector General* (Association of Inspectors General, 2004).

## II. BACKGROUND

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The nation's electric and gas utilities are subject to regulation by governmental agencies.<sup>8</sup> In the case of investor-owned utilities (as opposed to municipal-owned utilities and cooperatives), the regulatory body is typically a state-level regulatory commission, with its members generally elected by voters or appointed by the governor. Regulators' primary responsibility is to align private interests with the public interest (e.g., approving rates that afford a utility the opportunity to earn a fair return on its investment while providing reliable and safe utility service to its customers). Regulators sometimes consider factors such as economic development, energy efficiency initiatives, energy affordability, and environmental issues. Aligning these varied factors requires regulators to take an arm's length approach and consider all stakeholder positions before making decisions.

Decisions made by regulators affect the utility in addition to every resident, business, and governmental entity within a community. These entities' competing interests makes measuring the effectiveness of regulation by any single metric (e.g., residential customer rates) inappropriate. Ultimately, the goal of utility regulation is to advance the overall public interest in both the short and long-term.

One of utilities regulators' major responsibilities is to set utility rates through a trial-like legal proceeding known as a "rate case."<sup>9</sup> Rate cases are highly contested matters and require careful deliberation by regulators in order to ensure outcomes that are equitable for utilities and their customers. A rate case is initiated when a regulated utility files a request for a rate adjustment (supported by detailed information about its revenues and expenses) with its regulatory commission. Once the case is filed, parties may intervene. Intervening parties ("intervenors") often include the regulatory commission's trial personnel, a public advocate representing residential and small commercial consumers, private businesses, and other affected entities. The intervenors analyze the utility's proposal, file discovery requests, and develop independent positions based on their interests. These positions are developed through testimony submitted by expert witnesses. All of the intervenors' positions are subject to discovery and cross examination at hearings.

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<sup>8</sup> Many jurisdictions across the country have restructured the regulatory paradigm, making energy generation an unregulated or competitive service. However, generation in Louisiana remains a regulated service. The issue of the appropriateness of competitive generation is beyond the scope of this project. TBG notes that Entergy's operating companies were placed in a more competitive market for wholesale generation as a result of their decision to join a regional transmission organization as of December 2013.

<sup>9</sup> The procedures described are typical, but may vary by jurisdiction.

At the conclusion of this process, a presiding officer compiles the evidence, upon which the commissioners can base a fair and impartial decision. The commissioners are assisted by advisory personnel, separate from the trial personnel. The parties may propose a settlement to the regulatory commission for its consideration at any point prior to issuance of a final decision. The commission bases its decision on the evidence presented; these orders include findings of fact and conclusions of law.

In addition to the judicial function described above, regulatory commissions also function in a policy-making capacity. For example, regulators can develop procedural rules related to the regulatory process or develop programs to assist and protect low-income utility customers. Formal hearings with witnesses and briefs are common for these matters because different parties often have different views on policy issues. Typically, there are fewer restrictions regarding communication with the commissioners on policy issues. Unlike the trial-like approach for rate cases or other contested cases, the participants in the regulatory process use a legislative approach that includes conversations with stakeholders, input provided at public meetings, and review of practices in other jurisdictions.

Both regulatory approaches described above (i.e., judicial and legislative) are critical to effective regulation. These activities must undergo periodic examination to ensure that the regulatory framework promotes transparency and maintains the integrity and independence of the parties' different interests.

## **Utility Regulation in New Orleans and Louisiana**

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### *New Orleans*

The Home Rule Charter of the City of New Orleans ("Home Rule Charter") empowers the City Council (Council) as the retail regulator for utility services in Orleans Parish.<sup>10,11</sup> According to Section 3-130(1) of the Home Rule Charter:

The Council of the City of New Orleans shall have all powers of supervision, regulation, and control consistent with the maximum permissible exercise of the City's home rule authority and the Constitution of the State of Louisiana and shall be subject to all constitutional restrictions over any street, railroad, electric, gas, heat, power, waterworks, and other public utility providing service within the City of New

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<sup>10</sup> Local regulators are responsible for retail electricity costs (i.e., supplier to end user) whereas the Federal Energy Regulatory Commission (FERC) has regulatory authority over wholesale electricity costs (i.e., supplier to supplier).

<sup>11</sup> The Council also has regulatory authority over cable and telecommunications franchises in Orleans Parish. Those regulatory activities are outside the scope of this project.

Orleans including, but not limited to the New Orleans Public Service, Inc. and the Louisiana Power and Light Company, their successors or assigns.<sup>12</sup>

This authority makes New Orleans the only city in the nation to regulate the services provided by an investor-owned utility where a state-level regulatory agency is in place.<sup>13</sup> The Home Rule Charter also grants the Council authority to grant franchises for public utilities.<sup>14</sup> Because the power to grant franchises and regulate public utilities is codified in the Home Rule Charter, any attempt to change the Council's authority would require approval by a majority of the City's voters.<sup>15</sup>

The Council consists of seven elected members who serve four-year terms. In May 2014 the Council combined the Utilities Committee and the Cable and Telecommunications Committee to form the Utility, Cable, Telecommunications and Technology Committee (UCTTC), which currently includes five councilmembers.<sup>16</sup> The UCTTC is responsible for making recommendations to the full Council on all utility-related regulatory matters.

The Council Utilities Regulatory Office (CURO) is responsible for providing the Council with in-house assistance on regulatory matters. CURO is currently staffed by a Director and an administrative assistant. In addition to CURO personnel, the Council obtains assistance from outside legal, technical, and accounting consultants ("the Advisors") to carry out its regulatory responsibilities.

The Executive Branch of City government also has a role in the regulatory process. Historically, attorneys in the Law Department and personnel from the now-defunct Department of Utilities participated in regulatory matters that affected customers and taxpayers. As written, the Home Rule Charter and City Code established a framework that directs the Executive Branch to make recommendations about critical regulatory matters (including rates) and grants the Council exclusive authority to make decisions.

According to Section 4-1301(1) of the Home Rule Charter, the Director of Finance shall perform the following activities:

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<sup>12</sup> New Orleans Public Service, Inc. and Louisiana Power and Light Company later became Entergy New Orleans and Entergy Louisiana.

<sup>13</sup> The District of Columbia Public Service Commission regulates the energy utility provided by investor-owned utilities within the District, but there is no state-level agency to fill this role.

<sup>14</sup> Home Rule Charter, Section 3-128.

<sup>15</sup> Home Rule Charter, Section 9-201.

<sup>16</sup> TBG conducted interviews and obtained documents from the three members of the former Council Utilities Committee.

- Recommend rates and revisions thereof, to be charged by any public utility subject to regulations by the City;
- Recommend terms to be incorporated in any franchise granted by the City;
- Supervise and investigate public utilities operating in the City for compliance with franchise terms, rate orders, and any matter concerning the interests of the City or its residents with respect to the operations of a public utility; and
- Issue public reports and make recommendations to the Mayor on any matter concerning the interests of the City with respect to the operations of public utilities (e.g., assert the City's interest as an energy consumer).<sup>17</sup>

The Director of Public Works is also required to assert the City's interest as a utility consumer by recommending terms to be incorporated in contracts for utility services to City buildings.<sup>18</sup> In addition, the Mayor is required to select an audit or accounting firm to work under the direction of the Director of Finance to audit and investigate utilities.<sup>19</sup> Collectively, these provisions require the Executive Branch to conduct investigations and offer recommendations as an independent participant in the regulatory process.

TBG found that the City's Executive Branch did not actively participate in the regulatory process, as required by law.<sup>20</sup> Regulatory activities of the Executive Branch ceased over time; the Law Department no longer participated in regulatory matters, and an Executive Order eliminated the Department of Utilities in 2002.<sup>21</sup> The previous administration transferred the former Department of Utilities functions related to utilities regulation to the Finance Department.<sup>22</sup> As a result, the regulatory process has been contained entirely within the Council and the Advisors.

### *Louisiana*

The remaining investor-owned utilities in Louisiana are regulated by the Louisiana Public Service Commission (LPSC). The Louisiana Constitution of 1974 affirmed the authority of the

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<sup>17</sup> The Director of Finance's responsibility to assert the City's interest as a utility consumer is also listed in Section 158-286 of the City Code.

<sup>18</sup> Home Rule Charter, Section 4-901.

<sup>19</sup> City Code, Section 158-1.

<sup>20</sup> The City's Law Department recently obtained legal services from an outside firm to provide assistance with issues related to street light maintenance fees. The maximum amount payable for these services was not to exceed \$15,000. TBG concluded that the limited scope of the engagement did not satisfy the requirements outlined in the Home Rule Charter and City Code.

<sup>21</sup> Executive Order CRN-02-05.

<sup>22</sup> In addition to regulatory activities, the Director of Finance is required to oversee the placement of utility poles, wires, and meters throughout the City.

LPSC to regulate utilities throughout the state except for those already regulated by the governing authority of a political subdivision on the date the constitution was ratified.<sup>23</sup> Any attempt to expand the LPSC's regulatory jurisdiction in a particular political subdivision would require approval by a majority of that political subdivision's voters.<sup>24</sup>

Located in Baton Rouge, the LPSC consists of five elected Commissioners who each serve six-year terms representing various districts across the state.<sup>25</sup> These districts are large and represent a diverse cross-section of Louisianans; each of the LPSC's five districts includes an average of approximately 900,000 residents. According to redistricting data from 2011, District 3 included approximately 300,000 New Orleans residents while District 1 included the remaining 45,000 residents.<sup>26</sup>

The LPSC Commissioners are assisted in their regulatory efforts by an in-house staff of attorneys, accountants, economists, and others who are assigned to work on electric/gas and other utility issues. When the LPSC's internal staff is insufficient in number or lacking in specific expertise to address a particular regulatory matter, the LPSC obtains services from outside consultants.

#### *Entergy Corporation Inc.*

The Council regulates Entergy New Orleans Inc. (ENO) and Entergy Louisiana LLC (ELL) in the provision of electric and natural gas services in Orleans Parish.<sup>27</sup> Both ENO and ELL are wholly owned subsidiaries of Entergy Corporation Inc. (Entergy), a multistate holding company.<sup>28</sup>

Figure 1 illustrates Entergy's current corporate structure.

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<sup>23</sup> NOPSI (ENO's predecessor) was regulated by the Council at the time. Although the Council is the regulator for energy, cable, and telecommunications in New Orleans, other services that affect the City's residents (e.g., intrastate transportation, waste haulers, household goods carriers, non-consensual towing, and intrastate pipelines) are regulated by the LPSC.

<sup>24</sup> Louisiana Constitution of 1974, Article IV, Section 21(2)(C).

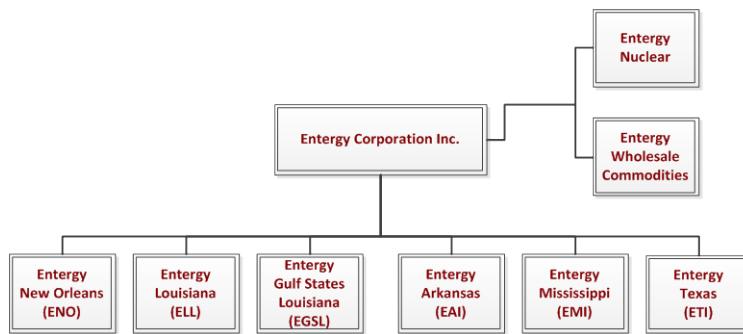
<sup>25</sup> Although most official regulatory proceedings are held in Baton Rouge, each of the LPSC Commissioners has at least one local office located in his or her district. Neither the LPSC Commissioners nor Councilmembers are required to have previous regulatory experience to qualify for their elected offices.

<sup>26</sup> The LPSC Commissioners from these districts also represent Louisianans in parishes such as East Baton Rouge, Jefferson, and St. Tammany.

<sup>27</sup> City residents in Algiers receive electric services from Entergy Louisiana (ELL), which also provides electric and gas services throughout most of the state. For purposes of this report, "ELL Algiers" will refer to electric services provided by Entergy Louisiana to the City's residents in Algiers. The merger of ELL and Entergy Gulf States Louisiana (EGSL) was approved by the LPSC and ELL and EGSL are in the process of consolidating their operations. The merger was not complete at the time of this report.

<sup>28</sup> Entergy Corporation is the lone Fortune 500 Company headquartered in New Orleans.

**Figure 1: Entergy Corporate Structure<sup>29</sup>**



These individual companies own and operate generation, transmission, and distribution assets and are subject to regulation by their respective regulatory commissions.<sup>30</sup> Since 2009 regulators of each Entergy operating company have participated in meetings of the Entergy Regional State Committee (ERSC), an organization founded to coordinate the operations of and upgrades to Entergy's transmission system.

Figure 2 summarizes operating data related to each of the Entergy utilities.

**Figure 2: Statistics for Entergy Operating Companies (2013)<sup>31</sup>**

Utility	Electric Customers	Total Retail Electric Revenues (\$ millions)	Retail sales (GwH)	Average use per residential customer (KwH)
<b>ENO</b>	168,000	\$482	5,104	12,479
<b>ELL</b>	677,000	\$2,426	32,222	15,019
<b>EGSL</b>	392,000	\$1,406	19,663	15,531
<b>EAI</b>	700,000	\$1,693	20,860	13,537
<b>EMI</b>	441,000	\$1,157	13,118	15,226
<b>ETI</b>	422,000	\$1,272	16,814	15,554
<b>Total</b>	<b>2,800,000</b>	<b>\$8,436</b>	<b>107,781</b>	<b>14,558</b>

According to the data listed in Figure 2, ENO represents only 6 percent of Entergy's total customers and retail revenues for electric service. As a result of ENO's small size compared with

<sup>29</sup> In this report the acronyms listed in this figure will be used to refer to the individual Entergy operating companies.

<sup>30</sup> Entergy Nuclear and Entergy Wholesale Commodities are not subject to state-level regulation.

<sup>31</sup> "United States Securities and Exchange Commission, Form 10-K 2013," Entergy Corporation, Inc., accessed July 1, 2014, [http://www.entropy.com/content/investor\\_relations/pdfs/2013\\_Entergy\\_Form\\_10K.pdf](http://www.entropy.com/content/investor_relations/pdfs/2013_Entergy_Form_10K.pdf).

the other operating companies, minor cost allocations within the Entergy system can disproportionately affect the city's customers.

### *Entergy System Agreement*

Since 1951 the Entergy operating companies have functioned under the terms of the System Agreement, a contract that governs the operation of the individual companies as a single power pool to capture the economic efficiencies of a larger system.<sup>32</sup> The System Agreement is subject to regulation by the Federal Energy Regulatory Commission (FERC) and has provided the legal basis for joint planning, construction, and operation of electric generation and transmission facilities as a single, integrated system for the benefit of all of the Entergy operating companies.<sup>33</sup> Thus, the System Agreement created a framework in which costs and responsibilities must be shared across the Entergy operating companies.<sup>34</sup> These cost allocations have been a frequent source of conflict and litigation before FERC as retail regulators and other stakeholders challenged responsibilities, costs, and benefits assigned to utilities in their respective jurisdictions. As discussed later in this report, ENO will be the only member of the System Agreement after ELL and EGSL exit in February 2019.

### **Local vs. State Regulation of Utilities in New Orleans**

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The primary goal for this project was to assess the City's unique regulatory model and determine whether this model best served the public. Alternatively, would a shift in regulatory authority to the LPSC provide the City with a more effective regulatory framework in accordance with industry/government norms? TBG considered contributing factors such as the history and politics of New Orleans utilities regulation, the System Agreement, and possible future regulatory issues in performing this assessment.

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<sup>32</sup> The current version of the System Agreement was approved by FERC in 1985. Subsequent service schedules have amended the System Agreement.

<sup>33</sup> Entergy Services, Inc. (ESI) administers the agreement on behalf of the operating companies.

<sup>34</sup> A major principle of the System Agreement is the concept of allocating "roughly equal" electricity production costs among the Entergy operating companies. In 2005 FERC issued Opinion No. 480, in which it found that the level of production costs had been disrupted within the Entergy system. To minimize these disparities, FERC imposed a bandwidth remedy known as rough production cost equalization (RPCE) by which each operating company's total annual production costs must be within plus/minus 11 percent of the system-wide average. To achieve this, the remedy required operating companies with lower production costs to make payments to those with higher production costs to ensure that no single operating company falls outside of the plus/minus 11 percent bandwidth. Through the Council's regulatory efforts at FERC, approximately \$46.5 million in RPCE payments were made to ENO between 2007 and 2013.

### *History*

Associate Justice Oliver Wendell Holmes Jr. of the U.S. Supreme Court once said, “a page of history is worth a volume of logic.” This sentiment is particularly true as it relates to the issue of local vs. state-level regulation in New Orleans, the System Agreement (i.e., shared costs among the Entergy operating companies), and Entergy’s plan to build two nuclear plants in Port Gibson, Mississippi (known as Grand Gulf No. 1 and No. 2).

In the late 1970s and early 1980s, significant cost overruns related to the construction of Grand Gulf No. 1 led to a period of protracted litigation between regulators and the Entergy operating companies (then known as “Middle South Utilities Inc.”).<sup>35</sup> At the core of this debate was how billions of dollars in costs related to Grand Gulf should be distributed among the various Entergy operating companies. Retail regulators sought to minimize the effect on customers within their respective jurisdictions.

During this debate residents of New Orleans voted to transfer regulatory authority from the Council to the LPSC beginning in January 1982. In 1983 Entergy filed a cost allocation plan with FERC that proposed ENO (formerly known as “New Orleans Public Service Inc.” or NOPSI) customers would be responsible for 29.8 percent of the Grand Gulf No. 1 costs while ELL (formerly known as “Louisiana Power & Light Inc.” or LP&L) customers would be responsible for 38.6 percent. Prior to the regulatory transfer, the Council argued that ENO should absorb only 9 percent of costs while ELL should absorb 41 percent, in proportion with each utility’s projected energy needs.

In 1985 FERC adopted the LPSC’s proposed allocation plan that reduced Entergy’s proposal of costs allocated to ENO and ELL to 17 percent and 14 percent, respectively.<sup>36</sup> Although the cost allocations proposed by LPSC and adopted by FERC were less than the original Entergy proposal for both Louisiana utilities, the reduction in ENO’s allocation was significantly less than the reduction in ELL’s allocation. Shortly thereafter, New Orleans voters reversed course and returned regulatory authority to the Council.

### *Local Representation*

Current and former Councilmembers, Council personnel, and the Advisors often stated in interviews that shifting regulatory authority to the LPSC would be a mistake; the Grand Gulf experience demonstrated that the LPSC Commissioners would not necessarily act in the best

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<sup>35</sup> According to information provided by the Advisors, the original estimate for construction of Grand Gulf No. 1 and No. 2 was \$1.2 billion. However, the cost of completing Grand Gulf No. 1 alone exceeded \$3.8 billion.

<sup>36</sup> EGSL was not a part of the allocation plan adopted in 1985 because Entergy did not complete its acquisition of EGSL until 1993.

interests of the City and its utility customers because the LPSC Commissioners represented a greater number of ELL and EGSL customers in other jurisdictions. Thus, cost allocations driven by the System Agreement could be moved away from ELL and EGSL customers and forced on the City's utility customers.<sup>37</sup>

The interviewees listed above also asserted that regulatory decisions made by seven Councilmembers are more accountable to local utility customers and the will of the electorate in New Orleans. In contrast, 87 percent of the City's voters would be represented by a single LPSC Commissioner whose vote was only one among a total of five Commissioners.<sup>38</sup>

#### *Changing Business and Market Structure*

With the exception of ENO, all of the Entergy operating companies have exited or are in the process of exiting the System Agreement.<sup>39</sup> The dissolution of the System Agreement will directly affect utility customers in New Orleans because they will lose access to low-cost generation and transmission assets owned by the exiting operating companies.

In addition to significant changes involving the System Agreement and the pending consolidation of ELL and EGSL, all of the Entergy operating companies joined the Midcontinent Independent System Operator (MISO) in December 2013. MISO is a nonprofit regional transmission operator that manages the flow of electricity on the grid within its regional footprint (Canada to the Gulf of Mexico) and operates markets for its members to purchase and sell energy. According to Entergy, joining MISO will provide customers with cost savings in the coming years because the operating companies would have access to MISO's organized power markets.

The end of the System Agreement combined with the recent shift to MISO represent significant changes for ENO and ELL Algiers. At this juncture, it is unclear exactly how these issues will affect the City's utility customers in the coming years. Given this uncertainty, TBG performed this assessment under the assumption that ENO will continue exist as a standalone operating company.

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<sup>37</sup> In addition, interviewees emphasized that local regulatory authority provided the opportunity to pursue Council-supported policy initiatives related to energy efficiency whereas similar initiatives appeared to be a lower priority at the LPSC.

<sup>38</sup> Interviewees also stated that the Council's proximity and accessibility to the City's customers provided an opportunity for interested parties to provide input on regulatory matters during Council/UCTTC meetings whereas most of the LPSC's regulatory proceedings were held in Baton Rouge.

<sup>39</sup> EAI exited in December 2013 and EMI is exiting in November 2015. FERC recently approved ETI's request to exit in October 2018 and ELL and EGSL's request to exit in February 2019.

## Section Summary

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- The primary goal of regulation is to align private interests with the public interest (e.g., approving rates that afford a utility the opportunity to earn a fair return on its investment while providing reliable and safe service to its customers at a reasonable cost). Regulators must consider the overall public interest, not just customer rates, when weighing competing priorities. Regulatory commissions function in both judicial and legislative capacities, depending on the matter at hand.
- New Orleans is the only city in the nation to regulate an investor-owned utility when there is a state-level agency in place. The Home Rule Charter vests the Council with the authority to grant franchises, set rates, and exercise regulatory control over utilities operating in Orleans Parish. The remaining investor-owned energy utilities in Louisiana are regulated by the LPSC.
- The City's Executive Branch does not actively participate in the regulation or oversight of utilities as required by law; the regulatory process is managed entirely by the Council and the Advisors.
- The Council and the LPSC regulate operating entities owned by Entergy Corporation. Since 1951 Entergy's System Agreement created a framework in which costs and responsibilities were shared across the Entergy operating companies. These cost allocations have been a frequent source of conflict as regulators challenged responsibilities, costs, and benefits assigned to utilities in their respective jurisdictions. ENO is the smallest Entergy operating company; cost allocations from other operating companies can have a disproportionate impact on the City's utility customers.
- The City's voters approved a transfer of regulatory authority to the LPSC for a brief period in the 1980s. The City's voters transferred regulatory authority back to the Council after FERC approved LPSC's recommendation that allocated significant costs from the construction of the Grand Gulf nuclear plant to utility customers in New Orleans.
- Currently, Entergy is undergoing significant changes (e.g., dissolution of the System Agreement, participation in MISO, and corporate consolidation). It is unclear how the changing business and market structures will affect utility customers in New Orleans.

### **III. TBG ANALYSIS**

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#### **The Council's Use of Regulatory Resources**

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The OIG tasked TBG with analyzing the Council's use of regulatory resources to determine how resources were expended and identify areas for improvement. The primary goal of this analysis was not to identify potential cost savings; TBG recognizes that specialized regulatory expertise is expensive and regulators need qualified staff and experts. TBG conducted interviews, researched applicable legal requirements, reviewed budgetary data, and analyzed vendor invoices to understand how the Council used its regulatory resources.

#### **Cost of Regulation**

Regulatory costs incurred by the Council are not paid with general fund revenues from the City's operating budget. Instead, regulatory costs are charged to the regulated utility. According to Section 3-130(5) of the Home Rule Charter:

The powers of supervision, regulation, and control over any street railroad, electric, gas, heat, power, waterworks, or other public utility, shall include the authority to assess against such public utilities all costs, fees, and expenses incurred by the City of New Orleans in (a) the exercise of its powers of supervision, regulation, and control thereof, (b) the conduct of or participation in judicial, administrative, or other proceedings which directly or indirectly affect the ratepayers of the City of New Orleans, including by not limited to the costs, fees, and expenses of all services provided by consultants, engineers, attorneys, experts, and such other persons, firms or corporations having expertise in the supervision, regulation or control of a public utility, and (c) any costs, fees, and expenses otherwise related to such other matters over which the Council has jurisdiction.

Regulatory costs incurred by the Council are considered legitimate operating expenses and are included in ENO and ELL Algiers utilities' expenses when regulators approve rates.<sup>40</sup> As a result, the Council's regulatory costs are ultimately paid by the City's customers, just like every other reasonable cost of service incurred by the utility.

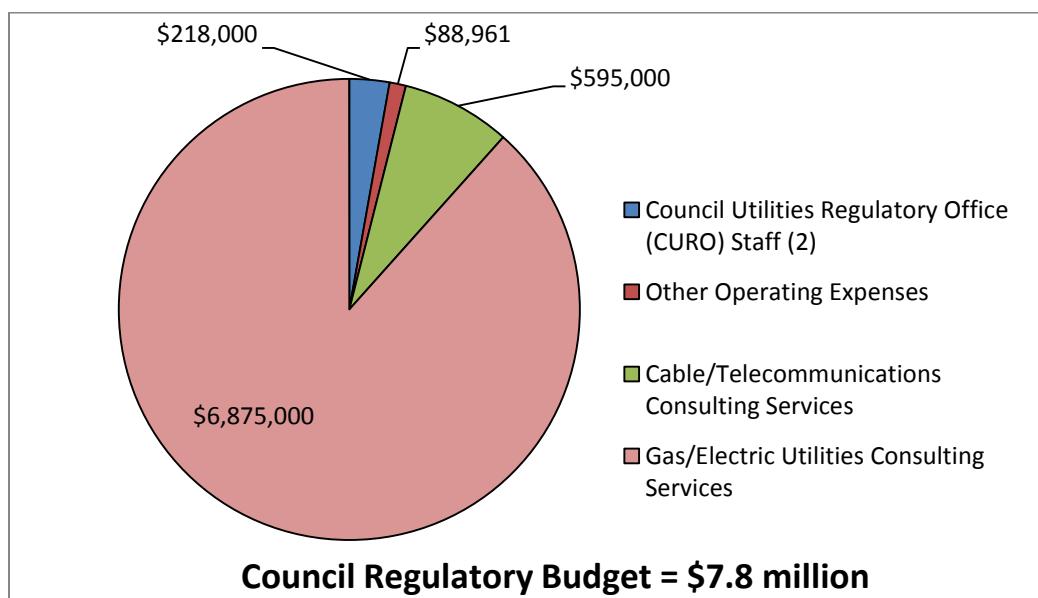
TBG examined the City's regulatory budget to determine how much funding the Council allocated to utilities regulation and to understand how the money was spent. According to the

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<sup>40</sup> City Code, Section 158-582.

budget, approximately \$7.8 million was budgeted for regulatory activities in 2013.<sup>41</sup> As shown in Figure 3, the Council relied almost exclusively on outside consultants (i.e., the Advisors) to perform its regulatory functions.<sup>42</sup>

**Figure 3: Council Regulatory Budget (2013)<sup>43</sup>**



The Council awarded the Advisors “not to exceed” contracts on an annual basis.<sup>44</sup> Figure 4 lists the maximum contract values approved by the Council for 2013.

<sup>41</sup> This amount includes approximately \$595,000 for consultants to assist the Council with regulation of cable and telecommunications providers. Although those regulatory activities were outside the scope of this project, they are included in this section to provide context about overall regulatory responsibilities and costs.

<sup>42</sup> This amount did not include the total cost of regulation incurred by the City because time spent by Councilmembers and their staff and other City employees on utility-related matters was not factored into the budget. This topic is discussed later in this report.

<sup>43</sup> CURO staff salaries and benefits and other categories of operating expenses in Figure 3 included a mix of electric/gas and cable/telecommunications regulatory activities. The CURO Director estimated that about 70 percent of his time is spent on electric/gas regulatory issues.

<sup>44</sup> Not-to-exceed contracts allow consultants to bill for actual hours worked up to a maximum dollar amount.

**Figure 4:** Maximum Contract Amounts for Council Advisors (2013)<sup>45</sup>

Advisor	2013 Contract
<b>Legal</b>	
Dentons	\$3,300,000
Wilkerson & Associates	\$875,000
<b>Technical</b>	
Legend Consulting Group	\$2,300,000
<b>Accounting</b>	
Bruno and Tervalon	\$200,000
Paillet, Meunier, & LeBlanc, LLP	\$200,000
<b>Total</b>	<b>\$6,875,000</b>

TBG identified four regulatory commissions with limited geographic footprints<sup>46</sup> and populations against which to compare the Council's regulatory scope, regulatory costs, and outsourced regulatory approach:

- Public Service Commission of the District of Columbia (PSC of D.C.),
- Delaware Public Service Commission (Delaware PSC),
- Rhode Island Public Utilities Commission (Rhode Island PUC), and
- Vermont Public Service Board (Vermont PSB).

Figure 5 compares these four regulatory commissions to the Council based on their size and scope of regulatory authority.

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<sup>45</sup> These contract amounts represent maximum expenditures for the electric and gas consulting contracts. TBG found that the Advisors collectively billed for 100 percent of the maximum budgeted amount between 2011 and 2013.

<sup>46</sup> States with large geographic footprints but small populations were excluded from this analysis (i.e., Montana, North Dakota, South Dakota, and Wyoming).

**Figure 5:** Comparison of N.O. City Council to Similarly-Sized Regulatory Jurisdictions

Regulator	Population (2012) <sup>47</sup>	Square Miles <sup>48</sup>	Electric Utility Customers (2012) <sup>49</sup>	Scope of Regulation
<b>N.O. City Council</b>	369,250	169	185,777 <sup>50</sup>	Electric and gas utilities Cable and Telecommunications
<b>PSC of D.C.</b>	633,427	61	223,599	Electric and gas utilities Telecommunications
<b>Delaware PSC</b>	917,053	1,949	282,488	Electric and gas utilities Cable and Telecommunications Water and wastewater
<b>Rhode Island PUC</b>	1,050,304	1,034	479,374	Electric and gas utilities, ferries, Water, Telephone, Pipelines, Railroads, Additional rail-related categories (depots, stations, grade crossings, etc.)
<b>Vermont PSB</b>	625,953	9,217	353,004	Electric and gas utilities Cable and Telecommunications Water and wastewater

The Council represents the smallest population and its regulatory scope is smaller than three of the four commissions used in the comparison.

Figure 6 lists the staffing and budgets of these regulatory commissions and compares the extent to which internal resources are used to perform regulatory activities.

<sup>47</sup> "State & County QuickFacts," United States Census Bureau, accessed June 1, 2014, <http://quickfacts.census.gov/qfd/index.html>.

<sup>48</sup> Ibid.

<sup>49</sup> "Electric Sales, Revenue, and Average Price," United States Energy Information Administration, accessed June 1, 2014, [http://www.eia.gov/electricity/sales\\_revenue\\_price/pdf/table10.pdf](http://www.eia.gov/electricity/sales_revenue_price/pdf/table10.pdf).

<sup>50</sup> Includes customers receiving electric service from ELL Algiers (22,000 customers in November 2014).

**Figure 6: Regulatory Commission Staffing and Budget Comparisons (2013)**

Regulator	Full Time Equivalents (FTEs) <sup>51</sup>	Employee Budget	Consultant Budget	Employee + Consultant Budget	% of Internal Resources
<b>N.O. City Council</b>	2	\$218,000	\$7,470,000	\$7,688,000	2.8%
<b>PSC of D.C.</b>	72.6	\$8,054,000	\$913,111	\$8,967,111	89.8%
<b>Delaware PSC<sup>52</sup></b>	29	\$2,712,900	\$1,581,100	\$4,294,000	63.2%
<b>Rhode Island PUC</b>	48	\$5,527,898	\$1,682,030	\$7,209,928	76.7%
<b>Vermont PSB<sup>53</sup></b>	75	\$6,818,761	\$5,628,155	\$12,412,515	54.9%

As Figure 6 illustrates, New Orleans is an outlier both in terms of the number of in-house staff and the amount of resources spent on external resources; while the PSC of D.C. allocated 90 percent of its resources on internal staff, New Orleans allocated 97 percent of its resources on outside consultants.

#### **Comparison of N.O. City Council and LPSC Regulatory Costs**

TBG also examined the cost and regulatory structure of the LPSC to compare how much regulatory activities cost customers within each respective jurisdiction. Further, how might the cost of regulation change if regulatory authority were shifted from the Council to the LPSC? The LPSC's scope of regulatory authority includes utilities such as electric, gas, water, wastewater, telecommunication services, passenger carrier services, waste haulers, household goods carriers, towing, and intrastate pipelines. All entities regulated by the LPSC are subject to inspection and supervision fees based on their gross receipts.<sup>54</sup> These fees are submitted to the Louisiana Department of Revenue on a quarterly basis and appropriated to the LPSC by the state legislature.<sup>55</sup>

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<sup>51</sup> With the exception of the CNO City Council, the FTEs include Commissioners of the respective regulatory commissions.

<sup>52</sup> These amounts include personnel and funding for the Delaware Division of the Public Advocate (DPA). The agency serves as a public advocate and is located within the Executive Branch of Delaware state government. Although DPA is not a division of the state's regulatory commission, they were included in this analysis because they regularly intervene in regulatory matters.

<sup>53</sup> These amounts include personnel and funding for the Vermont Department of Public Service (DPS). The agency serves as a public advocate and is located within the Executive Branch of Vermont state government. Although DPS is not a division of the state's regulatory commission and not exclusively limited to regulatory activities, they were included in this analysis because they regularly intervene in regulatory matters.

<sup>54</sup> La. R.S. 45:1177.

<sup>55</sup> Ibid.

The LPSC operating budget for the 2013-2014 fiscal year was approximately \$9.6 million.<sup>56</sup> Almost 80 percent of the LPSC's annual budget (\$7.2 million) was allocated to labor costs for 92 full-time employees and the five elected commissioners. According to data obtained from the LPSC, 21 (or 23 percent) of its full-time employees were assigned to work exclusively on regulation of electric and gas utilities throughout the state.<sup>57</sup> This group consisted of eight attorneys, seven auditors, four technical specialists, and two economists.

The LPSC also obtains services from consultants on an as-needed basis for specific matters when internal manpower or expertise is insufficient. The LPSC passes expenses for outside consultants on to customers through utility charges in the same way the Council does. TBG obtained data related to consultant expenses from the LPSC and divided the costs into two categories, Entergy and non-Energy, to compare the LPSC's regulatory expenses for gas and electric utilities to the Council's, as shown in Figure 7.<sup>58</sup>

**Figure 7: LPSC Consultant Expenses for Gas and Electric Utilities Regulation (2011-2013)**

Year	Entergy-related Consultant Costs	All Other Utilities Consultant Costs
2011	\$4,953,044	\$633,914
2012	\$3,385,221	\$548,759
2013	\$5,816,963	\$610,145
Total	<b>\$14,155,228</b>	<b>\$1,792,818</b>

Between 2011 and 2013, the LPSC spent approximately \$4.7 million per year on consultants for Entergy-related regulatory matters. According to the LPSC, approximately \$8.8 million (62 percent of the \$14.2 million) of the outside consulting costs for Entergy utilities (ELL and EGSL) related to matters before FERC, including the transition to MISO and Entergy's failed attempt to sell its transmission assets to ITC Holdings Corporation ("ITC").<sup>59</sup>

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<sup>56</sup> This amount represents the LPSC's internal budget for 2013; funds for outside consultants for gas and electric utilities are not included in this amount.

<sup>57</sup> Additional personnel such as Administrative Law Judges work on regulatory matters related to gas and electric utilities. However, these employees were excluded from this analysis since it was not possible to delineate exactly how much of their time was spent on gas/electric regulatory issues versus other industries within the LPSC's regulatory authority such as water, wastewater, telecommunication services, passenger carrier services, waste haulers, household goods carriers, towing, and intrastate pipelines.

<sup>58</sup> Since the LPSC uses outside consultants on an as-needed basis, TBG used data related to actual expenses to calculate cost rather than budgetary information.

<sup>59</sup> The complex nature of the MISO and ITC transactions may have created an increased reliance on outside consultants during this period for both the Council and the LPSC.

TBG used the available data to estimate how much the Council and the LPSC typically spent each year for regulation of gas and electric utilities.

**Figure 8:** Estimated Annual Cost of Regulation of Entergy Operating Companies by New Orleans City Council and the LPSC

Regulator	FTEs for Gas/Electric Regulation <sup>60</sup>	Personnel Budget (2013)	Average Consultant Costs (2011-2013)	Estimated Total Cost
<b>N.O. City Council (ENO and ELL Algiers)</b>	1.4 <sup>61</sup>	\$152,600 <sup>62</sup>	\$6,601,857	\$6,754,457
<b>LPSC (ELL and EGSL)</b>	21 <sup>63</sup>	\$1,721,153	\$4,718,409	\$6,439,562

The Council and the LPSC spent a similar amount on regulating Entergy utilities within their respective regulatory jurisdictions between 2010 and 2013. TBG used these data and the number of customers to estimate the annual cost of regulation per customer under regulatory jurisdiction of the Council and the LPSC, as shown in Figure 9.

**Figure 9:** Estimated Annual Cost of Regulation per Customer

Regulator	Estimated Total Cost	Number of Electric Customers	Estimated Annual Cost per Customer
<b>CNO City Council (ENO and ELL Algiers)</b>	\$6,754,457	185,777	\$36.36
<b>LPSC (ELL and EGSL)</b>	\$6,439,562	1,038,332	\$6.07

New Orleans customers pay approximately six times more in regulatory costs on an annual per customer basis than customers of Entergy companies regulated by the LPSC. Although this disparity can be attributed in part to the difference in the number of customers within each

<sup>60</sup> The number of FTEs does not include Councilmembers or the LPSC Commissioners.

<sup>61</sup> According to the CURO Director, 30 percent of his time was spent working on regulatory issues related to cable and telecommunications. TBG also applied this same discount factor to the CURO administrative assistant.

<sup>62</sup> TBG applied the 30 percent discount factor to the total 2013 personnel budget of \$218,000, which resulted in a personnel budget of \$152,600.

<sup>63</sup> TBG notes that these 21 FTEs also perform regulatory activities for the other gas and electric utilities regulated by the LPSC, but it was not possible to delineate exactly how much of their time was spent working on Entergy-related matters.

regulatory jurisdiction, the Council's practice of almost exclusively using outside consultants rather than less expensive in-house staff was also a factor.

Based on the above calculations, TBG estimated how much regulation of the City's utilities would cost under the LPSC. If the LPSC assumed regulatory authority of the City's utilities, ENO and ELL Algiers would be required to submit inspection and supervision fees based on operating revenue to the State of Louisiana.<sup>64</sup> TBG used information obtained from Entergy's 2013 filings with the U.S. Securities Exchange Commission to estimate annual fee costs to the LPSC of approximately \$467,000.<sup>65</sup>

Although the LPSC has an internal staff assigned to utilities regulation, it would incur additional costs for outside consultants if it regulated the City's utilities. The outside consultants would likely be used for FERC-related matters, rate cases, and other dockets when internal manpower or expertise was insufficient. TBG developed a conservative estimate of potential regulatory costs under LPSC regulation based on the assumption that ENO could be responsible for approximately \$1.5 million per year in FERC-related costs for outside consultants (i.e., the same per-utility FERC costs incurred by ELL and EGSL).<sup>66</sup> In addition, TBG estimated another \$900,000 per year in non-FERC consultant costs. Combined with the annual supervision fees calculated above (\$467,000), TBG projects a conservative cost of regulation under LPSC regulation to be approximately \$2.9 million per year, or approximately \$3.8 million less than the direct costs under Council regulation (see Figure 10).

However, TBG cautions that the cost of regulation should not be the determining factor when comparing regulation under the Council against the LPSC. Although TBG projects regulatory cost savings by a shift to LPSC regulation, these cost savings are not sufficient to offset the importance of protecting the interests of the City's customers as the System Agreement dissolves.

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<sup>64</sup> La R.S. 45:1177.

<sup>65</sup> TBG performed this calculation by assigning the tax for each revenue level as outlined in La R.S. 45:1177 based on ENO gross receipts of approximately \$620 million in 2013. Gross receipts from ELL Algiers were not used in this calculation because they are not delineated on ELL's filings with the U.S. Securities and Exchange Commission. Some of the rates outlined in R.S. 45:1177 changed on Jan. 1, 2015.

<sup>66</sup> LPSC spent approximately \$4.7 million per year on outside consultants for ELL and EGSL between 2011 and 2013 (Figure 8). FERC-related matters resulted in costs of approximately \$2.9 million per year, non-FERC retail investigations accounted for the remaining \$1.8 million. TBG assumed similar per-utility costs to develop a conservative estimate of the LPSC's costs to regulate ENO.

### **Internal vs. External Regulatory Resources**

A key question TBG considered as part of its analysis is whether the City's utility customers are better served by the Council's approach of using the Advisors for nearly all regulatory tasks or whether the Council's regulatory effectiveness and efficiency could be improved by shifting some or all of these functions in-house. Although some of TBG's analysis and recommendations may produce cost savings, the goal is more effective regulation.

Internal staff at regulatory commissions across the country typically consist of a multidisciplinary team of lawyers, financial experts, accountants, economists, and engineers whose expertise spans a broad range of issues such as rates, taxes, depreciation, integrated resource planning (IRP), energy efficiency, wholesale markets, and FERC-related matters.<sup>67</sup> When in-house personnel are insufficient in number or lack expertise on a specific matter, regulatory commissions obtain services from outside consultants to supplement existing resources. The Council does not take a similar staffing approach because it does not have an internal staff with significant capacity or expertise.

TBG recognizes the typical disparity in resources between regulators and the investor-owned utilities they seek to regulate. Indeed, it would be counterproductive only to focus on decreasing regulatory costs if the unintended consequences resulted in less effective regulation.

Some additional questions TBG sought to answer included:

- Are the right consulting firms providing the Council with advice on the right issues?
- Are the personnel within the individual consulting firms providing services at a reasonable cost to customers?
- Is the Council managing the consultants effectively?

### **Council Solicitation for Regulatory Services**

TBG reviewed the qualifications the Council was seeking from potential outside consultants to understand the scope of activities assigned to the Advisors. The Council issued a Request for Qualifications (RFQ) titled "Electric and Natural Gas Regulatory Services" in September 2011. The RFQ sought information from firms interested in providing regulatory assistance on legal, engineering, and accounting matters. The solicitation acknowledged that CURO was

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<sup>67</sup> Some staff members at state-level regulatory commissions are national thought leaders on various utility matters and sometimes later become consultants or private sector attorneys.

understaffed and the Council anticipated support and guidance from outside consultants to build in-house capacity for “cost savings reasons and advancement of progressive policies.”

The Council sought descriptions of consultant qualifications in the following areas:<sup>68</sup>

- Legal Consultants—Trial and regulatory experience before federal, local and state authorities in electric and gas matters;
- Engineering Consultants—Utility engineering issues including system planning, transmission reliability criteria, engineering-economic analyses, and economic/financial feasibility studies; and
- Accounting Consultants—Utility financing, financial auditing and sampling (including electric fuel and natural gas adjustment clauses, inter-affiliate transactions, accumulated deferred income taxes, and storm costs).

Generally, the goal of conducting a competitive selection process is to solicit proposals from multiple qualified firms in order to ensure that the public entity identifies the best value for limited public dollars. However, the Council received multiple proposals only for legal services, one of the three service categories. The technical and accounting consultants already under contract did not face competition from other firms. At the conclusion of the procurement process, the Council awarded contracts to the same group of firms that have provided ongoing legal, technical, and accounting services to the Council for many years.

A significant factor in the Council’s decision to retain the existing set of consultants was a desire to maintain continuity in the regulatory process. The Council’s lack of in-house staff meant that there was little to no institutional knowledge regarding critical utility issues and ongoing litigation. This, combined with electoral turnover on the Council, limited the Council’s ability to consider an alternate regulatory model or a different set of consultants.

In addition, TBG notes that the title (“Electric and Gas Regulatory Services”) and structure of the RFQ were broad because the Council was seeking assistance for all of its regulatory activities. In contrast, other regulatory commissions typically issue targeted solicitations to obtain consulting services for a specific matter. For example, the LPSC issued a solicitation in April 2014 titled “Examination of the Comprehensive Costs and Benefits of Net Metering in Louisiana” and

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<sup>68</sup> The RFQ included several additional qualifications sought by the Council. The RFQ also listed 14 subject areas and asked respondents to submit a description of relevant expertise and experience of key personnel assigned to the project. A copy of the RFQ is attached to this report as Appendix B.

received seven responses. TBG cannot verify whether the broad nature of the services sought by the Council served as a deterrent to additional consultants submitting proposals, but it should be noted that the LPSC's issue-specific approach has typically yielded more than one response and fostered competition.<sup>69</sup>

### The Advisors

TBG explored whether some or all of the consulting services provided by the Advisors could have been provided more cost-effectively by qualified in-house staff and/or issue-specific experts. Toward that end, TBG examined the roles of and services provided by the individual consulting firms that made up the Advisory team and assessed the Council's management of the consultants' activities. TBG also reviewed the Advisors' contracts and invoices submitted between January 2011 and December 2013 and interviewed members of the Advisory team, current and former Councilmembers, Council personnel, and additional stakeholders.<sup>70</sup>

#### *Dentons US LLP<sup>71</sup>*

Located in Washington, D.C., Dentons U.S. LLP, ("Dentons") provided the Council with legal advice, counsel, and representation on all regulatory matters.<sup>72</sup> According to the company's website, Dentons is one of the largest multinational law firms in the world and has annual revenues in excess of \$1 billion. The lead partner on the Council's Dentons team has worked with the Council on utilities regulation for more than 30 years. He played a pivotal role in the Council's efforts to rescue ENO from bankruptcy in the aftermath of Hurricane Katrina and assisted the Council in securing some of its victories on contested matters before FERC.

The 2012 contract the Council awarded to Dentons allowed for compensation up to \$3 million per year with the following hourly billing rates:<sup>73</sup>

Partners:	\$550/hour
Senior Managing Associates:	\$385/hour
Other Professionals:	\$165/hour

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<sup>69</sup> For example, LPSC issued 13 solicitations between January 2014 and June 2014. Only two of these solicitations failed to yield more than one response and eight of the solicitations received three or more responses.

<sup>70</sup> Members of the Advisory team stated that actual services performed are sometimes not listed on invoices to avoid revealing legal or case strategies to the utilities. TBG acknowledges this practice and analyzed the documents on their face value.

<sup>71</sup> The company was formerly known as SNR Denton, U.S., LLP.

<sup>72</sup> Dentons opened a local office in New Orleans and added local attorneys to its roster to assist with the Council's regulatory efforts.

<sup>73</sup> The Council increased the overall contract value to \$3.3 million in 2013.

In TBG's experience, these hourly rates are not in and of themselves unreasonable for complex legal matters; however, utilities and regulators often successfully negotiate lower rates for the type and amount of work included in the RFQ. In fact, a large amount of work might have been provided at a lesser billing rate given that the broad scope of tasks sought by the Council included many routine regulatory functions.

According to invoices submitted to the Council between 2011 and 2013, Dentons was paid an average of approximately \$3.2 million for 6,600 hours of work per year. The regulatory matters that comprised a significant portion of work during this period are listed in Figure 10.

**Figure 10:** Dentons Client Matter Hours (2011-2013)

Client Matter	Total Hours (2011 - 2013)	% of Total Hours
EAI/EMI Withdrawal from System Agreement (FERC)	5,082	25.8%
MISO/ITC Transaction (FERC)	4,563	23.1%
Miscellaneous Rates	3,090	15.7%
Conservation and Energy Efficiency/Integrated Resource Planning/ Renewable Energy Issues	1,749	8.9%
System Agreement Litigation (FERC)	1,420	7.2%
ENO Retail Rate Proceedings	1,254	6.4%
Entergy Annual Bandwidth Remedy	1,053	5.3%
LPSC vs. Entergy (FERC)	746	3.8%

Dentons spent approximately 60 percent of its time working on FERC regulatory matters.<sup>74</sup> FERC litigation often requires attorneys with specialized experience in litigating similar cases. Even if the Council had in-house staff, it would likely require ongoing assistance from outside legal consultants as the Entergy operating companies exit the System Agreement. Other matters that would likely require outside assistance include certain non-recurring and specialized MISO-centric issues under FERC jurisdiction. However, ongoing FERC matters such as rough production cost equalization and monitoring FERC/MISO developments could be handled by an in-house legal staff.

Although many of the FERC-related legal matters handled by Dentons fell squarely within the area of its expertise, Dentons attorneys also worked on issues that likely would have been better assigned to subject-matter experts. For example, Dentons billed approximately 1,750 hours for work on energy efficiency, renewable energy, and integrated resource planning (IRP)

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<sup>74</sup> TBG notes that the ITC matter is now closed because it did not gain regulators' approval.

issues at a cost of approximately \$850,000.<sup>75</sup> However, neither TBG nor the CURO Director identified any significant legal issues related to these matters. The Council's lack of in-house staff and its failure to retain issue-specific experts on energy efficiency and IRP matters meant that attorneys from Dentons performed these services rather than energy policy analysts with specialized expertise and lower hourly rates.

Dentons also billed approximately 3,100 hours at a cost of \$1.5 million for "miscellaneous rate issues." Activities in this category typically included preparing for and attending Council meetings/briefings and Advisor meetings regarding strategy, and reviewing documents and correspondence. These matters, a relatively large expenditure of time, could be managed with in-house resources. In addition, TBG notes that matters such as retail rate proceedings and Entergy's annual bandwidth remedy could also be capably managed by qualified in-house staff. Collectively, Dentons spent approximately 2,300 hours on these matters at a cost of \$1.1 million.

Generally, TBG found that many of the legal services provided by Dentons were not beyond the capacity of an in-house staff of attorneys combined with specialized policy experts. Shifting a significant portion of the regulatory workload to these personnel would allow the Council to focus Dentons' efforts on major legal issues, particularly matters before FERC.

#### *Wilkerson & Associates, PLC*

Located in New Orleans, Wilkerson & Associates PLC ("Wilkerson & Associates") has provided legal services to the Council for more than 20 years. The contract awarded to Wilkerson & Associates by the Council in 2012 allowed for compensation up to \$807,000 per year with the following hourly billing rates:<sup>76</sup>

Partners:	\$320/hour
Associates:	\$150/hour
Paralegals:	\$90/hour

According to invoices submitted to the Council between 2011 and 2013, Wilkerson & Associates was paid an average of approximately \$809,000 for 3,500 hours of work per year.

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<sup>75</sup> Integrated Resource Planning (IRP) is a planning process in which a utility treats all resources (e.g., utility generation, purchased power, energy efficiency, demand response, renewable resources, and other distributed generation, etc.) on a comparable basis to develop a superior mix of resources to meet the long-term needs of its customers reliably and cost effectively. These plans are periodically submitted to, reviewed, and approved/modified by the utility's regulator with input from stakeholders.

<sup>76</sup> In 2013 the Council increased the maximum contract value to \$875,000.

The firm's partner stated that he was not an active participant in the FERC litigation managed by the Dentons attorneys, but he provided strategic planning, institutional knowledge, and guidance for all regulatory matters to the Council, Advisors, and other stakeholders such as interest groups and private businesses. He noted his role in handling regulatory matters for the Council, such as drafting Council resolutions and orders in addition to developing briefing documents for ongoing matters.

The firm's partner acknowledged that many of the services provided by the Advisor firms, including his own, could be reasonably performed by internal staff. He described a staffing structure similar to the LPSC in which in-house regulatory staff could be supplemented by outside consultants for large-scale rate cases, FERC-related matters, or additional issues that may arise.

*Legend Consulting Group Ltd.*

Legend Consulting Group Ltd. ("Legend") is located in Denver and serves as the Council's technical advisor. It has provided engineering, economic forecasting, accounting, and other consulting services related to utility regulation for more than 30 years. According to its managing partner, Legend functioned as the de facto commission staff, similar to internal staff at other regulatory commissions.

In 2012 the Council awarded Legend a contract that allowed for compensation up to \$1.9 million per year with the following hourly billing rates:<sup>77</sup>

Managing Partners:	\$300 - \$350/hour
Executive Consultants:	\$265 - \$325/hour
Senior Consultants:	\$225 - \$275/hour
Supervising Engineer/Analyst/Economist:	\$195 - \$235/hour
Senior Engineer/Analyst/Economist:	\$165 - \$205/hour
Engineer/Analyst/Economist:	\$135 - \$195/hour
Executive Administrative Assistant:	\$85 - \$125/hour

Invoices submitted to the Council between 2011 and 2013 indicate that Legend was paid an average of approximately \$2.2 million for 8,700 hours of work per year. Figure 11 shows

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<sup>77</sup> In 2013 the Council increased the maximum contract value to \$2.3 million.

regulatory matters that comprised a significant portion of the work performed during this period.

**Figure 11: Legend Client Matters (2011-2013)**

Matter	Total Hours (2011 - 2013)	% of Total Hours
Analysis and evaluation of formula rate plan (FRP) filings	5,423	20.8%
Transmission business spin off & merger w/ ITC (FERC)	5,272	20.2%
MISO transition (FERC)	3,545	13.6%
Integrated Resource Planning (IRP)	2,259	8.7%
Ongoing regulatory activities <sup>78</sup>	2,224	8.5%
Review of purchased power agreement	1,306	5.0%

Legend spent over 20 percent of its time reviewing and analyzing formula rate plan filings (FRP).<sup>79</sup> TBG acknowledges that FRP filings are voluminous in nature and can require a surge in resources beyond the capacity of a limited in-house staff. However, it is not necessary to assign all of these activities to outside consultants.

Matters under FERC authority comprised a significant portion of the services provided by Legend. According to the invoices submitted to the Council, Legend billed approximately 8,800 hours at a cost of \$2.4 million providing analysis on the transition to MISO and Entergy's proposed plan to divest its transmission resources to ITC Corp.<sup>80</sup> TBG notes that a well-trained and multidisciplinary in-house staff could reasonably provide many of these services and could be supplemented by outside consultants if necessary.

Legend also billed approximately 2,200 hours at a cost of \$560,000 to assist the Council with IRP matters. The Council retained the Regulatory Assistance Project (RAP) in 2013 to review Legend's recommendations regarding ENO's IRP filings and make recommendations for

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<sup>78</sup> Invoices submitted by Legend described this category as "preparation and participation in weekly conference call with Legal Counsel and CURO regarding matters presently pending before City Council, State, and Federal venues, preparation of monthly rate comparisons and related ELL and ENO electric and gas matters."

<sup>79</sup> Formula rate plan (FRP) filings are a rate-setting approach; in between full rate cases a utility (usually annually) submits an update on its revenues, expenses, and earnings, and a rate adjustment is made if it falls outside a predetermined bandwidth. Legend personnel worked approximately a full-time workload per year on FRP filings, a higher than expected amount of time since the FRP rate adjustment mechanism is designed to streamline the regulatory process.

<sup>80</sup> TBG notes that the Entergy operating companies officially joined MISO in December 2013, and regulators rejected the planned divestiture of transmission assets to ITC. Thus, the ongoing need for these services is greatly diminished.

improvements.<sup>81</sup> According to personnel from RAP, Legend's understanding of basic IRP metrics was not consistent with industry standards. These services could have been performed better and at a lower hourly rate by specialized energy policy experts.

Legend also billed approximately 2,200 hours at a cost of \$550,000 for ongoing regulatory activities such as participating in conference calls, preparing for and attending meetings with various stakeholders, and completing monthly rate comparisons. The ongoing need and ensuing regulatory costs for these routine activities could be significantly reduced if the Council had in-house staff.

Generally, TBG found that many of the services provided by Legend could be reasonably provided by qualified in-house staff. Even if the Council expanded its internal staff, the Council could consider retaining Legend to provide supplemental services in the area of FRP, rate cases, or other matters that arise.

*Bruno and Tervalon, LLP and Pailet, Meunier and LeBlanc, LLP*

Located in New Orleans, Bruno & Tervalon LLP ("B&T") and Pailet, Meunier and LeBlanc LLP ("PML") provide accounting services to the Council. According to B&T's consulting director, he has worked for the Council as part of the Advisory team for approximately 20 years, and PML began providing services in 2005. The consulting director stated that the two firms coordinated their work for the Council; personnel at the two firms worked collaboratively and then those efforts were incorporated into larger work products developed by Legend and the other Advisors.

In 2012 the Council awarded contracts for each firm that allowed for compensation up to \$250,000 per year with the following hourly billing rates.<sup>82</sup>

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<sup>81</sup> Former electric utility regulators founded RAP, a non-profit organization, to assist active regulators in implementing clean-energy initiatives. RAP provided services to the Council at no cost.

<sup>82</sup> In 2013 the Council reduced the maximum contract value to \$200,000 for each firm.

<u>B&amp;T</u>	<u>PML</u>
Partners:	\$250/hour
Consulting Director:	\$200/hour
	Partner: \$265/hour
	Senior Manager: \$200/hour
	Proposed Subcontractors: \$200/hour
	Manager: \$170/hour
	Supervisor: \$150/hour
	Senior Staff: \$125/hour
	Professional Staff: \$100/hour
	Administration: \$75/hour

Invoices submitted to the Council between 2011 and 2013 indicate that B&T was paid an average of approximately \$233,000 for 1,300 hours of work per year and PML was paid an average of approximately \$227,000 for 1,345 hours of work per year.

During interviews with TBG, personnel from these firms discussed their work on Community Development Block Grant (CDBG) audits in the aftermath of Hurricane Katrina, rate cases, and affiliate transaction audits.<sup>83</sup> In addition, the Consulting Director reported the firms monitored Entergy's quarterly conference calls with investors and summarized Entergy's quarterly financial filings for the Council.

With the exception of CDBG audits, TBG found that the work performed by these two firms could be reasonably performed by one or two qualified in-house accountants, supplemented by outside consultants if necessary.

### **Regulatory Efficiency**

Utility customer funds spent on regulatory services should be subject to the same level of scrutiny and oversight as taxpayer funds spent on various city departments. As discussed in previous sections, the Council's approach has been to outsource all regulatory activities to outside consultants even though many of the tasks could be reasonably provided by qualified and well-trained in-house staff at a lower cost.

The issue is not whether the Council should use outside consultants; the issue is whether the Council should use outside consultants for everything. Advisors performed a significant volume of regulatory work (some routine, some highly specialized) for the Council, resulting in significantly higher costs than the costs of an in-house regulatory staff. Since the personnel

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<sup>83</sup> Community Development Block Grants (CDBG) are funds delivered through the U.S. Department of Housing and Urban Development. CDBG funds were a major source of recovery money in New Orleans after Hurricane Katrina.

from the various Advisory firms function as the Council's de facto regulatory staff, OIG staff reviewed Advisor invoices and calculated how much the City's utility customers paid for the services of individual consultants. Figure 12 outlines the average amounts paid per year between 2011 and 2013 for regulatory services provided by senior-level personnel at the various Advisory firms.

**Figure 12:** Regulatory Costs for Senior-Level Consultants at Advisor Firms (2011-2013), Ranked by Average Cost

Title	Hourly Rate	Average Hours per Year	Average Cost per Year
<b>Partner 4</b>	\$495 - \$565	1,500	\$794,831
<b>Partner 6</b>	\$275 - \$320	1,945	\$587,572
<b>Partner 5</b>	\$495 - \$565	1,000	\$531,457
<b>Partner 1</b>	\$495 - \$565	957	\$512,270
<b>Executive Consultant 3</b>	\$260 - \$300	1,505	\$423,758
<b>Managing Principal</b>	\$325 - \$350	993	\$331,381
<b>Executive Consultant 2</b>	\$285 - \$315	1,108	\$330,290
<b>Executive Consultant 1</b>	\$295 - \$310	1,032	\$310,205
<b>Partner 2</b>	\$495 - \$565	455	\$244,466
<b>Consulting Director</b>	\$150 - \$200	1,269	\$226,527

Senior-level consultants at the various Advisor firms billed between \$226,000 and \$794,000 per year to the city's customers. The large number of hours indicates that much of the work performed by these consultants was ongoing and not used just to meet a peak demand.

The purpose of this discussion is not to question the expertise or the quality of work performed by these consultants but to demonstrate how the Council used its external regulatory resources and the resulting costs of that policy decision. At issue is whether the high cost incurred by outsourcing almost all of the legal and technical support for the Council's regulatory functions was a reasonable use of customer funds. Regulatory commissions across the nation hire qualified (and often exceptional) personnel within the constraints of public sector salaries; New Orleans should be no different.<sup>84</sup>

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<sup>84</sup> TBG notes that Partner 4 previously worked as an attorney at the Federal Energy Regulatory Commission (FERC) and the Public Service Commission of the District of Columbia (DC PSC). If FERC and the DC PSC can be staffed with such qualified in-house professionals, the Council can also build an in-house staff comprised of qualified and effective personnel.

Many of the individuals listed in Figure 12 have decades of regulatory experience, but customers also paid for less specialized work performed by junior-level consultants in Advisor firms. Advisors assigned tasks such as performing monthly bill comparisons, analyzing data, and reviewing information submitted by the utility to junior level personnel because it required less specialized expertise. However, the total amount paid for the services of some of these junior-level consultants exceeded reasonable annual salaries for professionals within their peer groups.

**Figure 13:** Regulatory Costs for Junior-Level Consultants at Advisor Firms (2011-2013), Ranked by Cost

Title	Highest Degree and Year Obtained	Hourly Rate	Billing Year	Hours	Cost
Senior Engineer 2	M.S., Electrical Engineering, 2012	\$175	2013	1,472	\$257,556
Analyst 1	B.S., Business Administration, 2009	\$165	2011	1,427	\$235,455
Senior Economist	B.A., Economics, 2012	\$185	2013	1,193	\$220,659
Senior Engineer 1	B.S., Mechanical Engineering, 2008	\$170	2011	1,190	\$202,215
Analyst 2	B.S., Business Administration, 2011	\$160	2012	975	\$155,920
Senior Engineer 1	B.S., Mechanical Engineering, 2008	\$180	2012	846	\$152,190
Senior Analyst	J.D., Civil Law, 2009	\$165	2013	854	\$140,951
Analyst 2	B.S., Business Administration, 2011	\$160	2011	708	\$106,200

Utility customers paid in excess of \$150,000 per year for the services provided by several consultants shortly after they completed their undergraduate or graduate-level studies. In one instance, customers paid more than \$100,000 for the services of an individual who was only months removed from graduating college (Analyst 2 in 2011). The analysis further illustrates the implications of wholly outsourcing regulatory functions to outside consultants: a well-trained in-house staff consisting of professionals with similar qualifications and specialized expertise could perform at a lower cost the activities performed by these junior-level personnel.

The concept of shifting at least some portion of the regulatory activities currently provided by the Advisors to in-house staff is not new; in its September 2011 RFQ, the Council declared its desire and intention to build in-house capacity. Doing so would allow the Council to increase efficiency and build institutional memory related to critical regulatory matters.

The Advisors also openly discussed the Council building in-house capacity for regulatory activities. In their response to the RFQ issued by the Council, Dentons and Wilkerson & Associates stated:

We have worked closely and effectively with the Council's Utility Regulatory Office (CURO) now and have done so when that Office was fully staffed in the past. Our firms will assist the Council in reinvigorating the CURO so as to maximize its in-house capabilities. To the extent that this effort is successful, Dentons would consider an appropriate reduction to our annual budget.

Legend's response to the RFQ stated:

If we are re-selected by the Council, we would be pleased to assist the Council in providing further insight and assistance in developing and implementing its strategy for a fully-staffed CURO in the implementation of a cost-effective regulatory strategy.<sup>85</sup>

In the ensuing three and a half years since the Advisors submitted these proposals, the Council has made limited progress in its efforts to build in-house capacity.

### **CURO and Resource Management**

CURO is currently staffed by a Director and a Legislative Service Specialist (who handles mostly administrative duties). The CURO Director position was unstaffed for approximately three years before it was filled in November 2012 after a national search.<sup>86</sup> The current CURO Director previously served as Chief Litigation Counsel at the Kansas Corporation Commission where his primary responsibilities included supervising utility litigation efforts on docketed and non-docketed regulatory matters at the state and federal level. The CURO Director position is an unclassified (at-will) position with a budget allocation of approximately \$150,000.<sup>87</sup>

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<sup>85</sup> Legend envisioned a CURO comprised of a Director, Deputy Director, two Regulatory Policy Analysts, two Administrative Support personnel, and an unnamed number of interns.

<sup>86</sup> The Council's Interim Chief of Staff informed TBG that she fulfilled some of the Director's responsibilities (primarily reviewing consultant invoices) during the period the position was vacant.

<sup>87</sup> This amount includes fringe benefits such as health insurance and pension costs.

According to the job description for the CURO Director, the Council sought an attorney with at least seven years of regulatory experience to perform several duties including the following:<sup>88</sup>

- Develop and make recommendations to Council on policy issues on all regulatory matters;
- Investigate, review, and advise the Council, in coordination with the Council's outside consultants, on changes in rates and services;
- Manage and coordinate ongoing activities of Council's outside consultants, including recommendations on policy and procedure and establishment of priorities; and
- Prepare and administer a \$6.5 million annual budget and manage outside consultants employed by the Council.

These duties clearly define the CURO Director's role to manage and control the outside consultants, as well as to develop policy recommendations. Advisors are supposed to report to the CURO Director who manages and controls their activities. The CURO Director is envisioned as the Council's central regulatory resource, charged with advising elected Councilmembers and giving them the information they need to make decisions.

In contrast to the CURO director's envisioned role, TBG found that there was little effort to coordinate the Advisors' activities, reducing efficiency and creating opportunities for duplication of efforts. According to the CURO Director, the Advisors typically determined priorities and assigned work among themselves on matters in response to a utility's filing. These reactive matters included significant issues such as rate cases, formula rate plans, IRP filings, and routine fuel clause and other compliance filings. Budget allocations and staffing decisions related to these matters were not centrally directed by CURO or the UCTTC. The Advisors had a great deal of autonomy to make these decisions; they often decided what to work on and how many hours to spend on, and ultimately bill for, their activities. Advisors kept the CURO Director abreast of activities via telephone calls. The CURO Director reviewed invoices submitted at the end of the month.

The CURO Director's activities appeared to fall short of the management and control responsibilities outlined in the job description. Rather than directing and leading the outside consultants, the CURO Director's role resembled that of a liaison or coordinator. TBG recognizes that this scenario was at least partially driven by the fact that many of the Advisors had worked

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<sup>88</sup> The full job description is included as Appendix C. TBG notes that as the CURO staff grows it might not be necessary for the Director to be an attorney.

on the City's regulatory issues for decades and the CURO Director had been working in this capacity for approximately one year at the time of the interview.

Current and former Councilmembers and additional interviewees expressed concerns about the Council's and CURO's insufficient management of the Advisors. However, managing the role and performance of the CURO Director's duties is the responsibility of the Council. It is ultimately the Council's decision whether a group of outside consultants can provide services and incur expenses with minimal direction or controls to prevent duplication and inefficiency.

### **Recovery of Regulatory Costs**

During the interview process, current and former Councilmembers expressed varying opinions on whether the City could recover regulatory costs other than those directly billed by outside consultants. Some asserted that all costs associated with regulatory activities were recoverable and should be pursued. Others cited the City's budgetary constraints as a major impediment to building in-house regulatory assistance to the Council.

The concern about budgetary constraints raised two related questions: could the cost of in-house regulatory resources be covered by the utilities and therefore recoverable as a reasonable expense through rates charged to customers? Or, conversely, must the City bear the cost of in-house regulatory resources and recover them through taxes?

Section 158-628 of the City Code provides examples of the types of regulatory costs that can be recovered from its regulated energy utilities:

...That portion of fees of experts and consultants and that portion of the compensation and expenses of the Councilmembers, the Council staff, the Director of the Department of Finance and the staff of the Department of Finance, the City Attorney, and the staff of the Department of Law, or any other City agency or department which are attributable to the expenditure of time, money, or resources on ordinary and routine general regulatory operations and activities ... . Ordinary and routine regulatory operations and activities shall be deemed to include, but not be limited to, any and all reasonable exercises of the powers of supervision, regulation, and control of the rates and services of public utilities except the consideration or disposition of extraordinary matters such as rate cases.<sup>89</sup>

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<sup>89</sup> The law further states that these expenses may include the cost of retirement contributions, Social Security, workers' compensation, annual leave, sick leave, compensation time, overtime pay, and other fringe benefits and compensation and including all equipment, services, and supply purchase expenses, overhead expenses, and all other items of maintenance and operations expenses and all other direct and indirect costs, including the costs of general and routine investigations or studies initiated by the Council or Director of the Department of Finance.

In 2006 CURO retained an outside consultant (MAXIMUS Inc. or “Maximus”) to perform a cost allocation assessment to determine the full cost of all City departments involved in the regulation of the City’s utilities. Maximus found costs other than the cost of the Advisors and CURO (e.g., time spent by Councilmembers, Council staff, Law Department personnel) that were part of the full cost of regulation. TBG takes no position on the specific cost allocations determined by Maximus but agrees that the plain reading of the law would allow the City to recover a broad array of costs from its regulated utilities.<sup>90</sup> The ability to do so provides the City with flexibility in deploying internal or external resources for the Council’s regulatory process.

The City Code outlines several different ways in which regulatory costs can be recovered:

- Section 158-621 of the City Code authorizes the City to levy a general annual assessment on utilities equal to one-sixth of 1 percent (subject to adjustment upon approval of the Council) of the utility’s gross revenues from the preceding year to defray the ordinary cost of regulation.<sup>91</sup>
- Section 158-627 of the City Code authorizes the City to impose a supplemental annual assessment if the amounts previously recovered from the utilities were insufficient to defray all regulatory costs for the preceding year.
- Section 158-629 of the City Code states that the general annual assessment shall not exceed one-third of 1 percent of the utility’s gross revenues, but Section 158-691(a) of the City Code may provide additional flexibility in recovering all costs, even if they exceed the maximum limit.
- Section 158-626 of the City Code allows the Council to levy a special assessment on utilities for regulatory matters that are not ordinary or routine.

These sections of the City Code allow the Council (and Executive Branch) flexibility in its cost of regulation and the recovery of those costs. Moreover, the assessments can be used to obtain the necessary resources to build in-house capacity.

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<sup>90</sup> On behalf of TBG, the OIG requested a legal opinion on cost recovery issues from the Law Department, but the City did not submit an opinion on this matter. TBG received additional support for its plain language interpretation through the Council’s Interim Chief of Staff (an attorney), who provided the Maximus report.

<sup>91</sup> Based on ENO’s gross revenue in 2013 (\$620 million), the general annual assessment would have been approximately \$1 million.

### **Cost-Benefit of the Advisors**

A recurring theme TBG encountered during this project was the assertion that the efforts of the Council and the Advisors saved the City's utility customers over \$800 million since 2005.<sup>92</sup> The Advisors presented this information in a letter to the Council in March 2013.<sup>93</sup> In addition, the Advisors repeatedly discussed their value in terms of five consecutive rate decreases to the City's utility customers.

TBG, through the OIG, asked Advisors to explain how the \$800 million was calculated, but the Advisors provided only limited information. TBG further examined this information along with Council resolutions and determined that Advisors overstated some of the claims related to customer savings, particularly those related to FRP filings. For example, ENO requested a cumulative rate decrease of \$10.5 million in 2010 and eventually settled for a decrease of \$18 million, a net difference of \$7.5 million. However, the information presented to the Council claimed the entire \$18 million in customer savings as a result of their regulatory efforts. This claim ignores the fact that nearly 60 percent of the overall rate decrease was actually requested by the utility.<sup>94</sup> Figure 14 summarizes actual versus claimed savings for the FRP filings between 2010 and 2012.

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<sup>92</sup> TBG found that the Council had done an effective job regulating the City's utilities and that much of its effectiveness can be attributed to the input and efforts of the Advisors. In addition, the Council's and the Advisors' response to Hurricane Katrina was noteworthy considering the effort required to rescue ENO from bankruptcy so that residents could repopulate the City. TBG's President was part of an in-house response at the Pennsylvania Public Utilities Commission to one of the most severe pre-Katrina disasters facing a regulator and its utility: the Three Mile Island (TMI) accident. The in-house regulatory team (three professionals) developed a solution that avoided rate increases and the utility's bankruptcy while coping with evacuations. Although the Council's and the Advisors' response to Katrina was exceptional, the TMI situation demonstrates that internal regulatory resources with institutional memory can also capably respond to a disaster.

<sup>93</sup> According to Dentons, Legend developed the \$800 million cost saving claim mentioned in the letter.

<sup>94</sup> The Advisors seemed to understand this concept as they correctly claimed \$16.4 million of an overall \$30.3 million rate reduction in 2008.

**Figure 14:** Actual Savings vs. Savings Claimed by Advisors (\$ in millions)

Year	ENO Requested <sup>95</sup>	Council Approved Settlement <sup>96</sup>	Actual Difference	Savings Claimed <sup>97</sup>
<b>2010</b>	<b>(\$10.49)</b>	<b>(\$18)</b>	<b>(\$7.51)</b>	<b>(\$18)</b>
<b>2011</b>	<b>(\$26.60)</b>	<b>(\$29.10)</b>	<b>(\$2.50)</b>	<b>(\$14.70)</b>
<b>2012</b>	<b>\$7.70</b>	<b>(\$6.50)</b>	<b>(\$14.20)</b>	<b>(\$7.90)</b>
<b>Total</b>	<b>(\$34.99)</b>	<b>(\$54)</b>	<b>(\$24.21)</b>	<b>(\$40.60)</b>

The Advisors calculated over \$40 million in savings during this period even though the difference between ENO's requested rates and the Council's approved rates was only \$24.2 million.<sup>98</sup> In addition, these rate decreases were not a direct measure of regulatory effectiveness; attorneys from Dentons stated, and TBG concurs, that external factors such as lower fuel costs and a growing customer base also played a significant role in the rate decreases.

TBG does not doubt that the Advisors provided valuable input into the regulatory process, as would a qualified internal staff, targeted consultants, and a publicly funded public advocate (to be discussed later in this report). Regulators and their staff regularly provide recommendations that lead to reductions in a utility's requested rates and made changes to utility proposals. However, just because the cost of regulation was less than the benefits or savings produced by regulation does not mean that regulatory approach was efficient or appropriate.

The overstated claims of the Advisors did not help inform the discussion about effective regulation. TBG suggests that the City focus on improving its regulatory structure and processes rather than on claims that might not be accurate or endorse the current regulatory approach.

<sup>95</sup> Dentons provided this information in a written response to TBG and OIG.

<sup>96</sup> Dentons provided this information in a written response to TBG and OIG.

<sup>97</sup> The dollar amounts listed in this column were included in the attachment Legend generated and submitted to the Council in March 2013.

<sup>98</sup> TBG recognizes that these settlements may have allowed the Council to resolve other disputed matters with the utility. However, the analysis is intended to focus solely on the customer savings claimed by the Advisors.

## Section Summary

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- Regulatory costs for outside consultants are charged to ENO and ELL Algiers and eventually passed on to the City's utility customers. The Council awarded contracts valued at approximately \$6.8 million for outside consultants in 2013, or approximately 96 percent of its total budget for energy regulation.
- Regulatory commissions across the nation have internal staff to fulfill a wide array of tasks. When these personnel are insufficient in number or lack the specific expertise occasionally required, regulatory commissions obtain services from outside consultants to supplement their existing resources. The Council's in-house staff was almost nonexistent (two employees), and nearly all of the regulatory activities were performed by outside consultants (i.e., the Advisors).
- The lack of in-house staff resulted in several members of the Advisory team billing a large number of hours. Many of the tasks performed by the Advisors could have been capably provided by a qualified and well-trained in-house staff at a lower cost. In addition, the Advisors worked on regulatory matters such as energy efficiency and integrated resource planning that could have been performed better by subject-matter experts at a lower cost.
- The CURO Director did not actively manage and control the Advisors. Instead, the Advisors led the regulatory process and had the ability to assign work among themselves without adequate oversight.
- The Council can fund an expansion of its in-house staff through various assessments and cost recovery mechanisms outlined in the City Code. These costs would eventually pass on to the City's utility customers, similar to costs for outside consultants.
- The Council and the LPSC spent a similar total amount on regulatory activities per year between 2011 and 2013. When compared on a per-customer basis, utility customers in New Orleans paid more than six times the regulatory costs that utility customers paid in the LPSC's regulatory jurisdiction. Although a shift to state regulation would likely result in regulatory cost savings for customers in New Orleans, these savings do not offset the importance of protecting the interests of the City's utility customers as the System Agreement dissolves.

## **The City's Regulatory Approach and Processes**

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The City's local regulatory authority over investor-owned utilities (rather than a state-level commission) is unique. The fact that the Council functioned as both the City's policymaking body and regulatory commission is also atypical. This dual role can create tension in the regulatory process: activities related to the development of legislation, such as informal communications with stakeholders, are not always appropriate for contested regulatory matters such as rate cases.

Given the importance of the Council's regulatory decisions, it was critical to examine regulatory processes to determine if they were being conducted in a manner that instilled confidence in customers and promoted transparency and fairness. As a rule, regulatory commissions put safeguards in place to solicit independent viewpoints and protect regulators and their staff from undue influence from the entities they regulate.

The primary participants in the City's regulatory process were the Council, the Advisors, and the utilities. TBG examined this regulatory approach and underlying processes to determine whether they were structured to ensure advancement of the public interest.

### **Executive Branch Participation**

Although the Council has "all powers of supervision, regulation, and control" of utilities, the Home Rule Charter and City Code require the City's Executive Branch (e.g., Department of Finance and Department of Public Works) to conduct its own set of regulatory activities, independent of the Council. These activities include performing audits of ENO, making recommendations related to rates and other matters, and representing the City's interests as a utility consumer. Participation by the Executive Branch would add independence and balance to the regulatory process because City officials outside the Council's control would be responsible for conducting investigations and making recommendations.

Despite these legal requirements, the Executive Branch did not participate in the regulatory process. This lack of participation resulted in the interests of the City's utility consumers and taxpayers being underrepresented because the Executive Branch did not make independent recommendations about rates or reporting on the utilities' compliance with regulatory orders. In addition, the lack of participation by the Executive Branch might create situations in which the Council assumed the City's role as an energy consumer (e.g., street lighting). In these instances, the Council (already somewhat conflicted by its role of passing a City budget that included utility expenditures) could find itself advocating for the City as a consumer. By

advocating for one particular customer, the Council could lose its ability to maintain independence and consider all stakeholder positions without a conflict of interest.

### **Administrative Law Judge Functions**

Hearings on contested matters (e.g., rate cases) before regulatory commissions are trial-like legal proceedings in which the parties submit evidence and testimony for examination and the case is eventually decided. Decisions made by regulators are subject to appeal to the courts by the utility or other intervenors.<sup>99</sup> The process and evidence upon which regulatory decisions are made must withstand independent review and scrutiny. Thus, regulatory proceedings require a presiding officer (also referred to as a hearing officer).

The minimum function of a hearing officer is to ensure that regulatory hearings are conducted properly by setting schedules, conducting evidentiary administrative hearings, ruling on objections, and compiling an official record of the proceedings.<sup>100</sup> However, hearing officers can also function in an expanded capacity, weighing evidence and issuing a recommended decision to regulatory commissions. Hearing officers are typically referred to as administrative law judges (ALJ) when acting in this expanded capacity.

At the conclusion of a case presided over by a hearing officer who does not make recommendations (i.e., non-ALJ), a record of the proceedings is certified and submitted to the commissioners (in New Orleans, Councilmembers) for their consideration. The record often includes briefs and reply briefs that act as roadmaps for commissioners to follow in crafting a decision. The commissioners deliberate over the facts contained within the record and issue a final order.

In contrast, at the conclusion of a case presided over by an ALJ, the ALJ will consider the record (including briefs and reply briefs, if available) and recommend a decision to the commissioners and their advisory personnel. Typically, the parties to the case are afforded the opportunity to file exceptions and reply exceptions to the ALJ's recommendation. The ALJ's recommended decision is then sent along with the certified record (including any exceptions and reply exceptions) to the commissioners for their consideration. The regulatory commission is typically required to address all the parties' exceptions in its final order.

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<sup>99</sup> According to Sec. 3-130(7) of the Home Rule Charter, any party of interest may appeal a rate decision to the Civil District Court for the Parish of Orleans within 30 days from the date of the order of the Council.

<sup>100</sup> An analogy often used to describe this limited role is that the hearing officer functions as an umpire who calls balls and strikes on procedural matters but does not delve into the substance of the issues or make recommendations. There are other ways a regulatory body may compile a record. For example, the regulatory body could preside "en banc" and make a decision on the evidence they received/heard.

The ALJ approach described above allows regulatory commissioners to focus on the contested issues in the case in an orderly and efficient manner; the non-ALJ approach eliminates insights that the hearing officer may have gained by presiding over the case. With either approach, the final order is supposed to be based upon the official record augmented by matters that the regulatory commission is permitted to take into account as established facts (e.g., past cases or items of public knowledge such as current interest rates).

The Council's hearing officer has presided over the City's regulatory matters since 1998. He has not functioned as an ALJ by weighing evidence and making recommendations related to disputed regulatory matters.<sup>101</sup> Instead, his sole role has been to establish and enforce the procedural aspects of all regulatory proceedings. Section 158-432(b) of the City Code provides the Council with the authority to expand the hearing officer's role:

The Council may at any time appoint a referee, special master, administrative law judge, designated agent, or hearing officer to conduct all or any portion of the hearing or hearing to be held in any matter or proceeding governed by this article. Such an appointment shall be by a motion or resolution charging the said referee, special master, administrative law judge, designated agent, or hearing officer with those powers, duties, and responsibilities which the Council intends he shall exercise. At the conclusion of the discharge of his duties, the officer shall report his findings to the Council for their approval, rejection, or modification or supplementation...

This ordinance provides the Council with the flexibility of using either the ALJ or non-ALJ model.

Formal hearings on contested regulatory matters can be time consuming, expensive, and contentious for all involved parties. The Council's hearing officer stated that a formal hearing had not taken place since Hurricane Katrina and estimated that only one half-dozen formal hearings had been held since 1998. Instead, the Advisors typically negotiated a settlement with the utility prior to the opening of a formal hearing and submitted recommendations to the Council for approval.

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<sup>101</sup> According to the RFQ the Council issued in 2011, the minimum qualification for the hearing officer position was a law degree, but the Council preferred respondents to have five years of experience as an administrative law judge and familiarity with regulatory issues. The Council's hearing officer has presided over the City's regulatory matters since 1998 and does not have experience with substantive issues related to public utility regulation. The contract awarded in 2013 had an hourly rate of \$400 and a maximum value of \$30,000.

Many of the Advisors stated during interviews that their approach of settling rate cases and other contested matters resulted in better outcomes than would have been achieved through prolonged litigation. Generally, TBG encourages regulators and utilities to seek out mutually agreeable solutions in settlement negotiations. However, it should be noted that the closed-door nature of the practice can limit the transparency of the regulatory process. At minimum, settlements should be accompanied by detailed supporting orders that justify the bottom-line findings.

### **Ex Parte Communications**

Ex parte is a legal term for communication regarding a contested matter with a decision-maker (or those who advise decision-makers) without all other parties present. Prohibitions against ex parte communications are common at regulatory commissions to ensure that no party has unfair access to or influence over a decision-maker.<sup>102</sup> These prohibitions safeguard decision-makers against making regulatory decisions based on private communications and unchallenged information to which the public and other interested parties do not have access. In addition, ex parte restrictions reduce the potential for misconduct and the appearance of impropriety.

The Council has limited restrictions on ex parte communications related to regulatory matters. According to Section 158-322(e) of the City Code:

During the pendency of a proceeding under this article, no party of record shall engage in any ex parte **written** [emphasis added] communications with regard to any matter pending, with any councilmember or designated agency of the council.

As written, this rule allows off-the-record conversations (via telephone or in-person) on contested matters between Councilmembers and personnel from the utilities (or other intervenors), while prohibiting written communications after the matter is referred to the Council by the hearing officer.<sup>103</sup>

The weakness of the City's ex parte restriction allowed Councilmembers to take a legislative approach to resolving contested regulatory matters such as rate cases. Councilmembers stated that their informal conversations with the parties, including personnel from the utilities,

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<sup>102</sup> Exceptions to ex parte communications restrictions typically exist in rulemaking dockets in contrast to contested cases such as rate cases.

<sup>103</sup> TBG notes that the City's Board of Zoning Adjustments is responsible for presiding over contested matters and has strict ex parte restrictions in place for its members. These restrictions include both written and verbal communication between interested parties or elected officials with members of the Board while a case is pending.

allowed them to understand the regulatory issues better and more quickly. Although TBG recognizes that regulators must receive answers to their questions, there are better ways to accomplish this instead of engaging in informal ex parte communications. These undocumented communications reduce transparency in the regulatory process and introduce unintended bias because all parties do not have an opportunity to review and challenge the information provided to decision-makers.

Instead of undocumented ex parte communications, Councilmembers can obtain information by:

- Attending hearings and ask questions of the parties as permitted by Section 158-432(b) of the City Code, which allows any or all Councilmembers to appear beside the hearing officer and question witnesses and request data;
- Designating a member of the Council's advisory team to ask questions at a Councilmember's request;
- Sending questions to the hearing officer or ALJ, asking that the parties develop the official record on specific topics;
- Asking questions in writing, providing all parties an opportunity to respond; and
- Requesting oral argument on a case or specific issues.

All of these methods would provide Councilmembers with access to information they need to make quality decisions without the inherent risk and transparency issues associated with ex parte communications.

### **Staff Bifurcation**

Individual staff members at regulatory commissions typically fulfill either a trial or an advisory role in a contested regulatory proceeding. Personnel assigned to the trial function serve as a party to the case and cross examine witnesses and submit testimony. Personnel assigned to the advisory function provide guidance and assistance to commissioners as they deliberate on contested matters. This approach is called staff bifurcation and is imposed to avoid ex parte violations and ensure that the advisory personnel provide an independent review and assessment of the position(s) developed by the trial personnel. Without a separation of these functions, the same individuals who are providing testimony and contributing evidence are the same individuals who recommend a decision to commissioners. A bifurcated staff, whether composed of internal staff or consultants, adds to the transparency of the regulatory process and helps ensure that the decision-making process is fair and impartial.

TBG found that the Advisors filled multiple roles during the investigatory process on contested matters. Typically, ENO or ELL Algiers made a filing (e.g., a request for a rate increase) to the Council and the Advisors asked questions through the discovery process. The technical consultants offered testimony and the legal consultants cross examined the witnesses of other parties to the investigation. At the conclusion of this process, the hearing officer (non-ALJ) certified the evidentiary record to the Council without a recommendation. The Advisors then shifted their role from trial to advisory by recommending a final resolution of the case to the Council.<sup>104</sup> During this entire process, parties to the case could discuss the case with Councilmembers.

In the process described above, there was no formal mechanism in place to allow for an independent party with adequate resources to examine the Advisors' findings and recommendations to the Council. As a result, any potential flaws or biases in the Advisors' positions could go undetected.<sup>105</sup> It would be possible for CURO staff, the Executive Branch, or a publicly funded public advocate (to be discussed) to perform an independent, third-party examination of the Advisors' findings and recommendations. However, these parties were either nonexistent or not meeting their legal obligation to participate in the regulatory process.

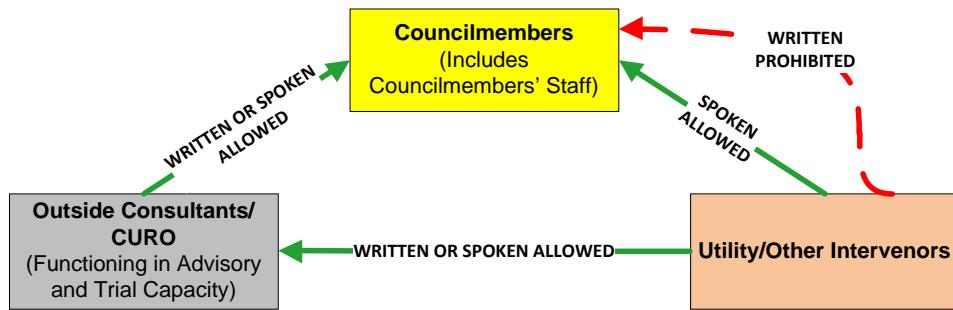
The City's current approach to ex parte communications and staff bifurcation is shown in Figure 15.

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<sup>104</sup> TBG notes that the Advisors' practice of shifting roles from trial to advisory also occurred during the periods in which the Council was considering proposed settlements negotiated by the Advisors. As stated previously, the Council's hearing officer stated that a formal hearing has not taken place since Hurricane Katrina.

<sup>105</sup> This scenario was demonstrated by RAP's assertion that Legend did not understand basic IRP metrics. However, RAP was retained in a limited capacity and not on an ongoing basis.

**Figure 15:** Current Communications from Parties to Councilmembers and Advisory Personnel (Non-Bifurcated)<sup>106,107</sup>



As shown in Figure 15, the utility and other intervenors were allowed to have off-the-record conversations with the Council, but written communications were prohibited. This arrangement runs counter to the purpose of ex parte restrictions and encourages informal conversations rather than documented correspondence where all interested parties have an opportunity to review and challenge the assertions of other parties. This process could be transformed by the Council by appointing an ALJ, tightening ex parte communication rules, and bifurcating its trial and advisory personnel.

### Public Advocate

According to the National Association of State Utility Consumer Advocates (NASUCA), 41 states have a designated agency that serves as a public advocate; 12 of these states provide this function through their Attorney General's Office while the remaining 29 states have governor-appointed public advocates. In addition to the regulatory agency's staff, public advocates represent consumers in the regulatory process. They typically make recommendations on rates and perform other activities similar to the responsibilities assigned to the City's Executive Branch in the Home Rule Charter and City Code. Regulatory commissions can also use public advocates to supplement or replace the use of its own in-house staff and consultants in proceedings before the commission, thereby allowing the commission's personnel to provide the advisory function.

The interests of public advocates and regulators often align, but there are many issues, such as the financial fitness of the utility, cost allocations, rate designs, metering rules, and economic

<sup>106</sup> Figure 16 was derived from a model originally developed by the Legislative Audit Council of South Carolina. Legislative Audit Council, *A Review of the Public Service Commission* (Columbia, SC: Legislative Audit Council, 2003), 6, accessed March 1, 2015, [http://lac.sc.gov/LAC\\_Reports/2003/Documents/PSC.pdf](http://lac.sc.gov/LAC_Reports/2003/Documents/PSC.pdf)

<sup>107</sup> The Council's hearing officer (non-ALJ) was not included in Figure 16 because his participation is limited to procedural matters and not substantive regulatory issues.

development programs, on which an advocate for residential customers might take a position different from a public interest-oriented regulator. However, it is ultimately up to the regulator to decide cases based upon the overall public interest after receiving input from stakeholders with specific interests.

The City's utility customers did not have an official public advocate funded by taxpayers or utility customers. The not-for-profit Alliance for Affordable Energy has served on a limited basis as a de facto public advocate for the City's residents for almost 30 years. However, the Alliance for Affordable Energy had limited financial resources available to retain in-house regulatory staff or obtain legal or technical services from outside consultants. This limited its ability to participate in all regulatory proceedings and perform thorough and independent reviews of the utility's filings or the Advisors' findings and recommendations.

TBG notes that an independent, publicly funded public advocate could improve the Council's ability to bifurcate the trial and advisory functions of the regulatory process. Also, if the City created a public advocate position in the Executive Branch, the Public Advocate could fulfill many of the duties that are not being fulfilled by the Department of Finance.

### **Preside or Lead**

To encourage transparency, accountability, and proactive regulation, the responsibility of leading the regulatory agenda should shift to the Councilmembers and the in-house staff. An ongoing discussion in the regulatory community concerns the difference between reactive and proactive regulators. Reactive regulators preside over regulatory proceedings, respond to filings by the utilities, and manage other events/issues as they arise. Proactive regulators take a leadership role in pursuing solutions that align the interests of utilities and customers.<sup>108</sup> Neither model is apparent in New Orleans; the Advisors appear to drive the regulatory process.

One way the Council could claim leadership of the regulatory process would be to conduct management audits of its regulated utilities to determine their operational efficiency and performance. Since the operating costs of ENO and ELL Algiers are passed along to customers, it behooves the Council to ensure that the utilities' internal practices are reasonable. Management audits also provide important input into incentive-based or performance-based ratemaking proceedings such as formula-based rates, allowing regulators to be more proactive. Management audits are typically conducted at approximately five-year intervals, providing the utilities an opportunity to implement the findings. These reviews should be conducted under

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<sup>108</sup> Scott Hempling, *Preside or Lead? The Attributes and Actions of Effective Regulators* (Silver Spring, MD: National Regulatory Research Institute, 2010), 19-49.

the direction of the Council and not confused with the financial audits required to be conducted under the direction of the Department of Finance. TBG found no evidence that the Council conducts proactive management audits of its regulated utilities on a regular basis.

### **Public Access to Regulatory Documents**

Although UCTTC/Council meetings and media coverage provided the public with an opportunity to stay informed, they are not an adequate substitute for access to information contained within records and testimony upon which regulatory decisions are actually made. Section 158-42 of the City Code outlines standard filing requirements for applications requesting changes to rates or services:

It is intended that such standard filing requirements shall be liberally construed to permit the Council to perform a thorough analysis of all applications and shall be further liberally construed to promote the maximum public disclosure of all information relevant to any application governed under this article.

Access to these documents is not readily available on the Council's website.<sup>109</sup> Section 158-92(a) of the City Code requires utilities to make available copies of applications of changes to rates or services for public inspection at the following locations:

- (1) The main branch and every other branch of the New Orleans Public Library in the service area of the applicant utility; and
- (2) A foyer, lobby or other publicly accessible area of the business office building, and/or customer service office if any, of the applicant located within the jurisdiction, in which location the copies shall be openly and conspicuously displayed adjacent to an easily readable notice identifying the nature of the documents and stating the right of the public to inspect and copy the same.

Does making hard copies of documents available for public review at various locations throughout the City constitute "maximum public disclosure of all information" in the year 2015?<sup>110</sup> Regulatory commissions across the country (including LPSC) go further, making electronic filing systems available on their websites so interested parties can search past and

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<sup>109</sup> Some documents related to agenda items from UCTTC meetings are available through the minutes posted on the City Council's website. To access those documents, one must visit the video section of the Council's website and select "view all" archived videos. TBG did not consider these documents to be well organized or easily accessible to the general public.

<sup>110</sup> TBG also has similar concerns about the Council's public notice of docketed matters, as outlined in Section 158-362 of the City Code.

present docketed case files including testimony submitted by the parties and decisions reached by the commissioners.<sup>111</sup>

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<sup>111</sup> TBG reviewed the websites of all of the country's regulatory commissions and found that nearly every commission had some form of an electronic filing system that enabled the public to retrieve documents.

## Section Summary

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- The City's regulatory processes did not include involvement from the Executive Branch as required by law. The failure of the Executive Branch to conduct independent investigations and make recommendations resulted in a lack of input into the regulatory process from City officials outside the Council's control. In addition, the City lacked an independent, publicly funded public advocate. The lack of participation by these entities created an insular regulatory process that revolved almost exclusively around the efforts of the Advisors.
- A hearing officer functioning as an administrative law judge (ALJ) makes recommendations at the conclusion of contested regulatory hearings and allows regulatory commissioners to focus on the contested issues in the case in an orderly and efficient manner. The Council's hearing officer did not function as an ALJ, eliminating insights that the hearing officer might have gained by presiding over the case.
- The City's regulatory process lacked basic controls to assure fairness and objectivity. Verbal ex parte communications were allowed during contested matters. As a result, representatives from the utility or other participants in a contested matter could have off-the-record conversations with Councilmembers and influence the regulatory process without subjecting the content of the interchange to independent and public scrutiny.
- The Advisors filled multiple roles during the investigatory process on contested matters. They functioned as trial personnel to develop the evidentiary record and then served as advisory personnel to the Council on those same matters. This process lacked transparency and was vulnerable to abuse. In addition, it could reduce public confidence in the regulatory process by creating the opportunity for deals made behind closed doors.
- The Council did not have an electronic filing system that allowed interested parties to access regulatory documents and testimony. These systems are commonplace at regulatory commissions across the nation and add transparency to the regulatory process.

## V. CONCLUSION AND RECOMMENDATIONS

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### Conclusion

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TBG found that the Council's unique regulatory authority did not limit its ability to regulate rates effectively or focus on issues related to IRP and energy efficiency.<sup>112</sup> Shifting regulatory authority to the LPSC would yield regulatory cost savings. However, these cost savings would likely be dwarfed by significant cost allocations, because the current System Agreement could still pit the interests of ENO and ELL Algiers' customers against the interests of other Entergy customers in Louisiana. In addition, there is a high level of uncertainty due to ongoing changes to the Entergy operating companies (i.e., full dissolution of the System Agreement and shift to MISO). For all of these reasons, TBG concludes that it is in the public interest for the Council to continue as the regulator of the City's investor-owned energy utilities.<sup>113</sup>

However, there are several changes that should be made to increase the effectiveness of the overall regulatory approach. The Council relied almost exclusively on outside consultants to perform its regulatory functions. Despite the valuable contributions of the Advisors, the Council's wholly outsourced approach resulted in higher than necessary regulatory costs and prevented the ability to build in-house expertise and retain institutional knowledge regarding critical regulatory matters. A former Councilmember and most members of the Advisory team asserted that outside consultants, rather than internal staff, were necessary to empower the Council to take assertive regulatory stances with ENO and ELL Algiers. TBG finds this assertion to be false; regulatory commissions across the country use a mix of internal and external resources. New Orleans should be no different.

Many of the regulatory services provided by the Advisors could have been provided by internal staff at a lower cost. Despite the claims of some interviewees, the Council could fund an expansion of in-house staff through various cost recovery mechanisms outlined in the Home Rule Charter and City Code. Doing so would allow for a more efficient regulatory approach that balances in-house resources with specialized expertise from outside consultants, as needed.

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<sup>112</sup> Although the Council has made progress on IRP and energy efficiency matters, TBG notes that it lags behind many other regulatory agencies across the country.

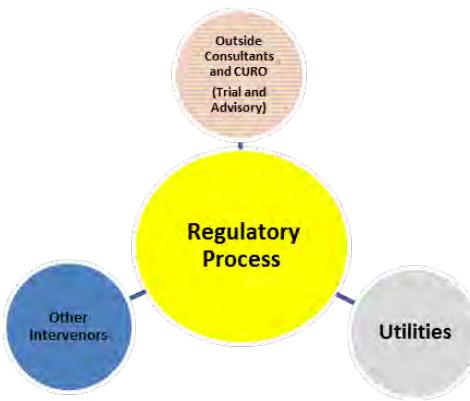
<sup>113</sup> TBG can envision a potential set of circumstances associated with the unraveling of the System Agreement, MISO membership, and the potential for a single Entergy operating company serving all of Louisiana (an issue beyond the scope of this project) in which the LPSC would better serve the public interest, but that would be conjecture at this stage and requires further study.

TBG found that the Council's regulatory approach and practices lacked basic controls to ensure transparency, prevent misconduct, and promote effective decision-making. For example, Councilmembers were permitted to engage in verbal ex parte communications with the utility and other intervenors. This practice has the potential to introduce bias and errors into the regulatory process because these off-the-record conversations go unchallenged and can have a disproportionate impact on regulatory decisions. In addition, the Advisors fulfilled multiple roles in the regulatory process (i.e., trial and advisory).

Advisors' dual role can create an echo chamber in which their findings and recommendations go unchecked. The lack of transparency was further exacerbated by the Council's use of settlements to resolve nearly all regulatory matters and the resulting lack of publicly available documentation to understand how and why decisions were made. As described above, the regulatory process was insular and mostly controlled by the Advisors on behalf of the Council. Instead, changes should be made to increase the number of participants in the regulatory process and implement necessary safeguards, such as the separation of duties combined with ex parte restrictions.

The City Charter places responsibility for regulating utilities on the City: both the Legislative and the Executive branches are instructed to participate in different and essential roles. The differentiated roles each is intended to play are designed to ensure that all parties' interests are protected. Currently, the regulatory process has a limited number of participants and is largely driven by the efforts of outside consultants on behalf of the Council. This framework is illustrated in Figure 16.

**Figure 16:** Current Participants in the City's Regulatory Process<sup>114</sup>



In contrast, the City's regulatory process should include the following roles: bifurcated trial and advisory personnel consisting of in-house CURO staff and/or outside consultants, a publicly funded public advocate, involvement by the City's Executive Branch (Director of Finance and Department of Public Works), other intervenors, and a hearing officer that makes recommendations (ALJ). This scenario is shown in Figure 17.

**Figure 17:** Recommended Participants in the City's Regulatory Process

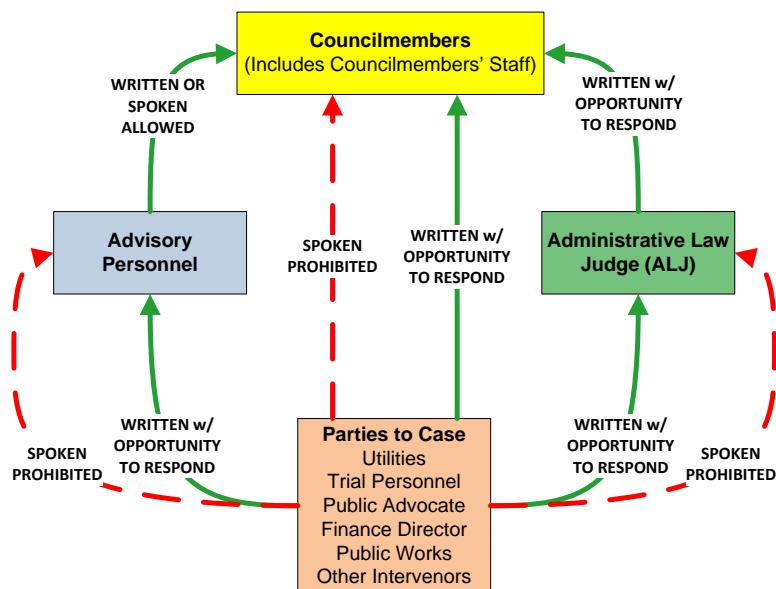


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<sup>114</sup> The Council's hearing officer (non-ALJ) was not included in Figure 16 because his participation is limited to procedural matters and not substantive regulatory issues. The striped circle labeled "Outside Consultants and CURO" represents the dual roles in the regulatory process (i.e., trial and advisory) that are fulfilled by these personnel. TBG notes that the Council is not depicted in Figures 16 and 17 but remains the ultimate decision-maker.

In addition to increasing the number of participants, the City should improve the safeguards in place to protect the integrity of the regulatory process. A regulatory process without staff bifurcation and ex parte restrictions lacks transparency and allows assertions of a party to a Councilmember to go unchallenged by the other parties. In contrast, staff bifurcation combined with ex parte restrictions is designed to avoid both the appearance of and the opportunity for impropriety. Figure 18 shows how the City's regulatory process for contested matters could function with staff bifurcation, ex parte restrictions, and involvement from additional participants (e.g., Executive Branch, Public Advocate).

**Figure 18:** Recommended Communications from Parties to Councilmembers and Advisory Personnel (Bifurcated)



A regulatory framework with staff bifurcation and effective controls to prevent ex parte communications eliminates the possibility that a decision-maker (Councilmember, advisory personnel, or hearing officer/ALJ) would be improperly influenced by any stakeholder without a fair opportunity for all parties to submit a rebuttal. This modified approach would add safeguards, promote transparency, and ensure a clear separation of duties among the various participants in the regulatory process.

Increasing the number of participants with clearly defined roles and imposing meaningful ex parte restrictions would add balance and independence to the City's regulatory process. This modified approach would increase the likelihood that regulatory decisions made by the Council effectively align the overall public interest with private interests.

## Recommendations

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TBG offers recommendations based on its analysis and believes that the Council can implement these recommendations without adversely affecting the quality of regulation currently delivered or the advice the Council receives. The current regulatory structure relies on embedded relationships, ignoring industry norms. There are organizational, structural, and procedural changes that can improve the Council's effectiveness as a regulator. TBG has organized the recommendations into three sections:

- Who should regulate energy utilities in New Orleans?
- How can the regulatory services be delivered more effectively and efficiently, without adversely affecting the quality of regulation?
- How can the City's regulatory approach and processes be improved to increase regulatory effectiveness and transparency?

Recommendations may fit into more than one category, but TBG has placed each recommendation into the category where it fits best. Most of the recommendations TBG presents were raised or suggested in one or more of the interviews with current and former Councilmembers, CURO, the Advisors, and the Alliance for Affordable Energy.

### **Who should regulate investor-owned utilities in New Orleans?**<sup>115</sup>

**Recommendation 1:** **The Council should retain its regulatory authority at least until there is further clarity about the dissolution of the System Agreement and transfer to MISO.**

TBG recommends that the Council retain its regulatory authority for the investor-owned energy utilities in New Orleans. TBG finds that the City's utility customers would be best served by the Council as the utility regulatory authority until there is further clarity about the dissolution of the System Agreement. The Council must also gain an understanding of how being part of MISO affects retail regulation of electric service before a different regulatory structure could be considered.

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<sup>115</sup> The Council's highest priority is to understand how the city's electric customers will be affected by the end of the System Agreement in 2019 and the shift to MISO. The Council must explore what options exist to ensure safe and reliable service at reasonable rates, as discussed in Recommendations 2-4. TBG is not privy to any actions to address this shifting structural framework, one that could be almost as challenging as issues such as the Grand Gulf Nuclear Station and providing stable utility service after Hurricane Katrina.

TBG considered but ultimately dismissed the creation of a regulatory agency separate from the Council. TBG believes this approach would create significant challenges. For example, questions would arise as to who should appoint regulators and changes to the City Home Rule Charter would be necessary to assign regulatory authority to an entity other than the Council. In addition, there is no evidence that part-time or volunteer regulators would be more committed or effective regulators than Councilmembers.

**Recommendation 2:** **The Council should work cooperatively with the LPSC on System Agreement and MISO issues to benefit utility customers in both regulatory jurisdictions.**

The City should continue and improve its cooperation with LPSC to search for mutually beneficial solutions to the unraveling System Agreement and co-existence in MISO. Both the Council and LPSC have participated in meetings of the Entergy Regional State Committee (ERSC). TBG anticipates that, with a different Entergy corporate structure and as members of MISO, the two regulators will find themselves with more areas of mutual agreement and cooperation to the benefit of Entergy's customers in New Orleans and elsewhere in the state.

**Recommendation 3:** **The Council should explore the possibility of Entergy merging ELL Algiers with ENO.<sup>116</sup>**

Entergy provides energy services to residents of both the east and west banks of the Mississippi River: ELL Algiers provides service to approximately 13 percent of the electric customers in New Orleans, and the remaining 87 percent of New Orleans residents receive electricity from ENO. Merging the two companies and shifting ELL Algiers' assets to the books of ENO could produce efficiencies and streamline regulation. The consolidated energy provider would require only one rate case, one fuel adjustment clause, one integrated resource plan, and additional benefits for all of the City's utility customers.<sup>117</sup>

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<sup>116</sup> An alternate approach for the City's utilities would be to make ENO and ELL Algiers municipal utilities. The Alliance for Affordable Energy suggested that the City could take ownership of the energy utilities servicing the City's customers. This idea is beyond the scope of this project and would require a separate analysis, and the benefits are unclear: Would a City-owned utility be a more responsible guardian of the public interest than a locally regulated entity when it comes to issues such as energy efficiency, the environment, local investment, and protection of low-income customers? What would be the effect on rates, tax revenues, and franchise fees? Would it be in the public interest to municipalize the City's only Fortune 500 Company? For all the above reasons, creating a municipally-owned utility, even the study of it, is not recommended at this time.

<sup>117</sup> TBG notes that the Council would need to account for the rate differential between these two utilities if they merged into a single entity.

The Council has recently taken steps to implement this recommendation. Ultimately, this consolidation could provide utility customers in Algiers with better service and streamline the regulatory process.

**Recommendation 4:** **The Council should explore the potential benefits of consolidating all three Entergy companies operating in Louisiana into a single entity.**

Recent FERC rulings indicate that the System Agreement will likely cease to exist sometime between 2015 thru 2019. The magnitude of this change and the potential impacts on the City's utility customers cannot be understated. Given the potential implications of these changes, TBG recommends that the Council initiate a study that examines the potential for a single Entergy operating entity in Louisiana consisting of ENO, ELL, and EGSL.

Personnel from Entergy and the LPSC noted that the economics of the operating companies could change when the System Agreement disintegrates fully and Entergy joined MISO, prodding them toward further consolidation. The Council and LPSC should explore the possibility of a single Entergy operating utility in Louisiana given the imminent post-System Agreement and MISO-centric environment in which the allocation of many of the costs and benefits would be confined to Louisiana.

Assessing what a single Entergy operating company in Louisiana would look like from both city and state perspectives is also an example of the coordinated, pro-active regulation advocated in Recommendation 2. Any such consolidation would need to include adequate protections to ensure that the City's customers are not allocated a disproportionate share of costs compared to residents in other parts of the state.

**How can the Council's regulatory services be delivered more effectively and efficiently?**

**Recommendation 5:** **The Council should officially designate a leader of the Advisory team and in-house staff.**

The Council's current regulatory team consists of two in-house personnel and five outside consulting firms, each separately responsible to the Council. TBG recommends that the Council officially declare and empower the CURO Director as the sole lead, responsible for the activities of the Advisors and in-house staff. The CURO Director's job description states that his job is to manage and control the outside consultants; the Council should direct him to do so. Such a

move would build upon the CURO Director's job description and would signal a change in the Council's regulatory approach.

The CURO Director should evolve into the principal point of contact for Councilmembers as he will be responsible for actively managing all regulatory resources (both internal and external). This organizational change places with a City employee the responsibility of the Advisors' efforts. Currently Advisors can assign work to themselves, set their own priorities, and decide on their own how to react to an action of ENO/ELL Algiers. However, having the CURO Director actively manage the Advisors would enable the Council to set priorities and lead the discussion. Doing so has the potential to decrease costs and increase the effectiveness of regulation.<sup>118</sup>

**Recommendation 6:** **The Council should discontinue some of its contracts with outside consultants.**

Many of the activities performed by Wilkerson & Associates involved strategic planning and guidance, engaging stakeholders across the regulatory spectrum, and handling the procedural aspects of regulatory proceedings. While these activities are important to the Council's regulatory efforts, they do not require an outside consultant at a cost of up to \$875,000 per year.

Although some of the accounting tasks provided by B&T and PML required specialized expertise and experience (e.g., audits of CDBG funds granted to Entergy), the majority of work assigned to these firms did not fall into that category. TBG recommends that the Council discontinue these contracts valued at up to \$400,000 per year.

In addition, the Council should discontinue its not-to-exceed \$30,000 annual contract with the hearing officer and shift to an ALJ approach (this topic is discussed in Recommendation 13).

**Recommendation 7:** **The Council should reduce some of its contracts with outside consultants, including contracts with Dentons and Legend.**

Many of the legal services provided by Dentons required specialized expertise with FERC-level litigation. However, the Council also used Dentons for issues that did not necessarily fall within its area of specialized expertise, such as IRP and other energy efficiency issues. In essence, the

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<sup>118</sup> Another approach would be for the Council to name one of the consultants the official lead of the Advisory team. However, TBG does not recommend this approach as the Advisors have a vested interest on what work is assigned and to whom.

Council used its contract attorneys as energy policy analysts. In addition, the Council used Dentons for miscellaneous regulatory matters that could have been provided by an in-house staff.

TBG found that most of the activities provided by personnel at Legend were comparable to those performed by in-house staff at regulatory commissions around the country. Although many of the personnel are accomplished and have expertise in their various fields, there is no convincing reason why the Council needs to outsource all of these activities at a cost of approximately \$2 million per year. Rather than using Legend to function as a de facto internal staff, the Council should use the firm on a more limited basis to supplement in-house resources (e.g., to provide additional manpower for reviews of FRP filings).

In addition, TBG notes that the significant amount of work performed by individual consultants or attorneys at Dentons and Legend indicates that the Council could build an in-house staff with a full-time workload. In-house staff would require external assistance for specialized expertise or increased manpower. To meet these needs, TBG recommends that the Council use consultants to supplement internal resources less frequently and at a lower annual cost.

**Recommendation 8:**      **The Council should issue topic and/or task-oriented solicitations for outside consultants.**

Since the Council's approach has been to outsource all of its regulatory functions, the solicitations issued have been very broad; they were written for the purpose of engaging an entire regulatory staff on a semi-permanent basis. Instead, the Council should issue more targeted RFPs, for example, to obtain technical services to represent customers' interests as they relate to a particular transmission project being undertaken by the utility. In July 2014 the Council issued a solicitation for a renewable energy technical advisor to assist with a particular docket (UD-13-02). TBG encourages the Council to continue to implement this targeted approach of obtaining specialized assistance as it builds in-house capacity.

**Recommendation 9:**      **The Council should increase its internal regulatory staff.<sup>119</sup>**

TBG found that many of the functions provided by the Advisors could be performed by in-house staff. Issues such as IRP, energy efficiency, rate design, fuel adjustment clauses, and formula-

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<sup>119</sup> According to the Chair of the UCTTC and the CURO Director, the Council is considering adding one or two professionals to its in-house regulatory staff. Although this represents progress, it is modest compared to the in-house staff described in this recommendation.

based rates are all within the capability of an in-house staff. Consultants typically add value to the regulatory process when there is an issue beyond the capabilities of the staff or when the work load is beyond the staff's resources.

Shifting the services from outside consultants to new CURO staff would provide for additional oversight, reduced regulatory costs, and would enable the Council to develop institutional knowledge about its regulatory activities. Building in-house capacity requires sustained commitment from the Council. The process also requires the cooperation of the Advisors as their decades of institutional knowledge must be transferred.

The Council has several options regarding how to build its in-house staff and has funding available to accomplish these goals. As a start, the Council should refer to job descriptions and salaries from other regulatory commissions (these can be found on the website of the National Association of Regulatory Utility Commissioners, [www.naruc.org](http://www.naruc.org)). The Council will need to make decisions related to the job classification status of the in-house staff and determine whether the Civil Service salary structure is sufficient to retain the caliber of personnel it is seeking for its regulatory activities.

The initial new hires could consist of approximately three lawyers (one who could serve part-time as a hearing officer/ALJ and one with experience in MISO and/or other relevant wholesale issues), five professionals with backgrounds in finance, economics, and/or accounting, and one engineer.<sup>120</sup> This is only a preliminary suggestion; the actual composition of this internal regulatory team should be determined by the Council and CURO Director.

TBG notes that the core of this recommendation is consistent with the opinion offered by the Partner from Wilkerson & Associates.

**Recommendation 10:**      **The Council should invest in training members of the UCTTC and internal regulatory staff.**

Even with the expanded regulatory staff recommended above, the staff will be relatively limited and will need to cover multiple issues and stay current on new regulatory trends. There are

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<sup>120</sup> TBG notes that the nature of some of the work performed by legal consultants is technical rather than legal. Based upon the number of hours worked, TBG recommends shifting reallocated some of the resources from legal staff to technical staff so that the technical experts can work on IRP and energy efficiency issues. Even if the Council does not adopt the entire set of re-staffing recommendations in this report, TBG suggests that it consider shifting some resources now allocated to legal consultants to specific technical consultants for issues such as IRP and energy efficiency.

many associations that provide professional training opportunities, such as the Institute of Public Utilities at Michigan State University, the New Mexico State University Center for Public Utilities, National Regulatory Research Institute and the National Association of Regulatory Utility Commissioners.

The Council should provide on-site training for the newly formed team, and new staff can quickly pick up on issues by reviewing past dockets. The Council should also reserve some of its budget to task members of the Advisory team with providing briefings as they are phased out or redeployed. TBG estimates that an initial training budget of approximately \$100,000 would be sufficient to retain subject-matter experts to visit New Orleans to provide two-day seminars on specific regulatory topics for the entire staff and to send each staff member to intensive off-site training opportunities.

**Recommendation 11:      The Council should recover all regulatory costs from ENO and ELL Algiers.**

As discussed above, it is within the City's authority to recover all costs associated with regulation, whether they are internal (employees) or external (consultants). Currently, the City recovers the costs incurred by the Advisors from the utilities, but does not recover the costs of CURO or costs incurred through the time spent on regulatory activities by Councilmembers and their staff or others involved in the regulatory function.

The City should be able to recover all of the costs of regulating energy utilities in the City with some internal bookkeeping efforts. Developing and implementing timesheets allocating time spent on regulatory matters by CURO and members of the Committee and their staffs should provide sufficient data for the City to allocate these costs to specific utilities and bill the utilities for these costs. With appropriate cost accounting, the City could allocate costs associated with space, payroll, human resources, and other overhead functions provided by the City to CURO.

This approach shifts the cost of regulation from taxpayers to utility customers, a common regulatory practice, and provides the City with the flexibility of using internal versus external resources.

**Recommendation 12:** **The Council should create and implement a standard set of billing guidelines and require outside consultants to comply with its requirements.**

Reviewing the invoices presented by the Advisors was time-intensive. Many monthly invoices from a single consultant were over 100 pages long and submitted to the Council as paper copies. Some provided overall client matter summaries in dollars but not hours. Daily logs provided little transparency about who attended what meeting or call, or if they were all in attendance the same amount of time. Each consultant's invoice had a different format.

TBG recommends that the Council establish and implement a standardized electronic billing practice for the Advisors. All consultant invoices should identify specific regulatory matters using a universal coding system for the City's regulatory matters, thus allowing the CURO Director to easily determine who performed how much work on a particular matter on a given date.<sup>121</sup> This change would increase the CURO Director's ability to identify duplication of efforts and increase regulatory efficiency. In addition, it would reduce the time and level of effort needed to review consultants' bills.

**How can the City improve its regulatory approach and processes to increase transparency and effectiveness?**

**Recommendation 13:** **The Council's hearing officer should function as an ALJ and provide Councilmembers with recommendations on disputed regulatory matters.**

Currently the Council's hearing officer is directed to certify a record and does not provide a recommended decision. As discussed above, recommendations are left to the same staff (i.e., the Advisors) who proposed on-the-record ideas that were subject to discovery and cross examination. TBG recommends establishing a system built around a recommended decision from an independent hearing officer functioning in an ALJ capacity that includes an opportunity for the parties to file exceptions to the hearing officer's recommended decision.<sup>122</sup> The Councilmembers and their new advisory team (separate from the trial team) could focus on the

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<sup>121</sup> Some of the information might be confidential, yet it still should be presented in a uniform format that allows the CURO Director to monitor costs and coordinate efforts.

<sup>122</sup> The ALJ function could be staffed using several different approaches (e.g., full time position, temporary staff/consultant, a member of the Advisors, an individual Councilmember). Although the Council should fully explore the issue, there may be clear benefits to having this function being provided locally.

recommended decision and the exceptions to it rather than on the thousands of pages in the certified record.

**Recommendation 14:**      **The City should establish a permanent Public Advocate for utility customers.**

The City should establish a permanent and independent Office of the Public Advocate (“Public Advocate”). The Public Advocate could represent residential and small commercial customers in adversarial matters before the Council and would have no advisory role (i.e., fully bifurcating the advocacy and advisory roles). If local utility regulation were ever shifted to the LPSC (e.g., full consolidation of Entergy’s operating companies in Louisiana), the Public Advocate could provide special representation of the City’s interests.

TBG further recommends that the Director of Finance fulfill his responsibility as outlined in the Home Rule Charter and City Code by appointing a Public Advocate. This approach would not only help the Department of Finance meet its regulatory responsibilities related to local utilities, it would increase the transparency and effectiveness of the regulatory process in that a non-Council entity would conduct independent investigations of ENO.

In keeping with this recommendation, the Director of Finance should review how public advocates function at other regulatory commissions to develop a detailed plan for how the City’s Public Advocate’s office should be structured and staffed.

**Recommendation 15:**      **The City should represent its interests as a utility customer.**

TBG notes that the City of New Orleans is a major customer of the electric and gas utilities regulated by the Council. Currently, the Council must play two roles: on the one hand it must set fair and equitable rates as regulators; on the other hand it must fulfill a legislative function, approving a city budget that includes payments for utility services incurred by the City. This dual role could create a conflict of interest. For example, the Council could stifle economic development if it attempted to impose an unreasonable increase on commercial utility rates so that it could lower the City’s utility costs and offset budgetary shortfalls.

The Department of Public Works and Department of Finance should represent the City’s interest as a utility consumer, as required by law. In addition, TBG’s recommendations for an independent Public Advocate (and the use of an ALJ that provides recommended decisions to the UCTTC) would help reduce the possibility or perception of a conflict.

**Recommendation 16: The City should conduct utility audits as required by law.**

The City Code requires that the City initiate financial audits of ENO. TBG found that these audits have not been performed. The Mayor should appoint an audit or accounting firm and the Director of Finance should manage these audits, as required by law. The results of these audits be made available to CURO, the Public Advocate, and the public. The Executive Branch should attempt to coordinate these mandated audits with ENO to avoid unnecessary duplication while complying with the law.

**Recommendation 17: The Council should strengthen ex parte rules.**

TBG recommends that the Council adopt ex parte rules that ban any party, including trial staff, from off-the-record communications, written or oral, with the hearing officer or Councilmembers or their advisory staff (internal or external) regarding any adversarial issue before the Council or UCTTC. There are many on-the-record approaches that a Councilmember could use to gather information so that the restriction on communication does not limit the information available to the Council. On-the-record approaches create an environment in which all the information is fully vetted by all parties and all the information relied upon in making these important regulatory decisions is documented.

This recommendation requires that the Council bifurcate staff roles from advisory roles, at least on individual cases, so that an individual who advocates a position on the record is not also advising the Council off the record (Recommendation 18). Taken together, the recommendations seek to increase the transparency and improve the regulatory process by separating duties to prevent inappropriate conduct by involved parties.

**Recommendation 18: The Council should bifurcate regulatory personnel.**

TBG recommends that the Council or CURO assign personnel, whether in-house staff or consultants, a clear role as either trial or advisory staff for each particular docket. The Council should bifurcate staff on a case-by-case basis, as TBG does not believe that the Council requires the extra expense associated with fully separate advisory and trial personnel.

Bifurcating staff in this way means that an attorney or analyst from trial staff who advocates a position during the hearing process would be prohibited from discussing the matter with the Council or members of their advisory staff. This separation of functions makes sense only if all parties are barred from having ex parte communications with Councilmembers and their advisors. TBG believes that this process also supports a regulatory structure in which the ALJ

provides recommended decisions to the Council to which parties could file exceptions. The creation of an independent public advocate also helps a move towards bifurcation and transparency.

**Recommendation 19:** **The Council should establish a process for regular management audits for the gas and electric utilities under its regulatory jurisdiction.**

In addition to decision-making authority regarding contested regulatory matters, the Council has broad authority to examine regulated utilities to ensure that they are operating efficiently and effectively. A potential action the Council could take to increase its leadership as a regulator would be to establish a process to conduct management audits of regulated gas and electric utilities. Examining various aspects of the utilities' operations would provide the Council with a tool to obtain critical information in a proactive manner. Although directed by the Council, these management audits would be paid for by the affected utility and performed by an outside entity with the support of the Council's regulatory personnel.

**Recommendation 20:** **The Council should develop and implement an electronic filing system and post documents and information related to regulatory matters on an improved website.**

Currently, the Council's regulatory process is opaque and largely hidden from public view. This does not meet the standard of "maximum public exposure" described in the City Code nor is it good public policy to obscure information from the stakeholders who are affected by the Council's regulatory decisions. TBG recommends that the Council develop and implement an electronic filing system that allows the public and other interested parties easy access to non-confidential regulatory documents. Web-based document rooms are standard practice at utility commissions across the country.

## Overview of Proposed Recommendations

Who should regulate investor-owned energy utilities in New Orleans?		
Recommendation	Key Benefits	Potential Issues
<b>1. The Council should retain its regulatory authority at least until there is further clarity about the dissolution of the System Agreement and transfer to MISO.</b>	<ul style="list-style-type: none"> <li>* Protect the interests of the City's utility customers as the System Agreement dissolves.</li> <li>* Continue progress on IRP and energy efficiency issues as compared with the rest of Louisiana.</li> </ul>	Continuing dissolution of System Agreement and MISO membership may negate the anticipated benefits of local regulation.
<b>2. The Council should work cooperatively with LPSC on System Agreement and MISO issues.</b>	<ul style="list-style-type: none"> <li>* Both regulators would likely increase their effectiveness by seeking mutually beneficial solutions when possible.</li> <li>* Reduce costs on FERC and MISO issues.</li> </ul>	Nature of System Agreement and FERC rulings create situations where the regulators have divergent interests.
<b>3. The Council should explore the possibility of merging ELL Algiers with ENO.</b>	<ul style="list-style-type: none"> <li>* All of the City's utility customers receive same attention and programs.</li> <li>* Cost savings generated as a result of a streamlined regulatory process.</li> </ul>	Rate differentials between both utilities.
<b>4. The Council should explore the potential benefits of Entergy consolidating all of its Louisiana companies into a single entity.</b>	<ul style="list-style-type: none"> <li>* Potential streamlined utility company with enhanced ability to absorb challenges such as storm damage, a unified voice at MISO and FERC, lowered utility-wide risk profile.</li> <li>* Reduced regulatory costs and elimination of ongoing intra-Entergy cost allocation disputes.</li> </ul>	Potential erosion of local regulatory authority and loss of support for Council-driven policy initiatives.

How can the Council's regulatory services be delivered more effectively and efficiently?		
Recommendation	Key Benefits	Potential Issues
<b>5. The Council should officially designate a leader of the Advisory team and in-house regulatory staff.</b>	*Internalize responsibilities for regulatory priorities, advice, and resource management.	Transitional challenges since City's regulatory process has been driven by outside consultants for decades.
<b>6. The Council should discontinue some of its contracts with outside consultants.</b>	* Eliminates some outside consultant expenses for activities within the capacity of an internal staff.	Ensure that the Council is not adversely affected during transition away from outside consultants.
<b>7. The Council should reduce some of its contracts with outside consultants.</b>	*Retains longtime Advisors for their specialized expertise while shifting some routine activities to in-house staff.	Ensure that the Council is not adversely affected during transition away from outside consultants.
<b>8. The Council should issue topic and/or task-oriented solicitations for outside consultants.</b>	* Improve overall regulatory effectiveness by obtaining specialized expertise on regulatory matters outside the expertise of in-house staff or existing consultants.	Identifying additional qualified experts. Potential for delays associated with procurement process.

<b>9. The Council should increase its internal regulatory staff.</b>	* Internalizes regulatory services in accordance with industry norms. Builds institutional knowledge and improves management and oversight of regulatory personnel. Reduces regulatory costs.	Council/CURO will need to develop a staffing plan, create job descriptions, set salaries, and conduct a national search to identify qualified personnel.
<b>10. The Council should invest in training of members of the UCTTC and internal regulatory staff.</b>	* Improve regulatory effectiveness of newly-hired internal staff and enhance Council's regulatory effectiveness.	Develop curriculum for training internal regulatory staff and Councilmembers.
<b>11. The Council should recover all regulatory costs from ENO and ELL Algiers.</b>	* Recover the full cost of regulation, particularly time and resources spent by non-consultants on regulatory matters.	Requires additional record keeping by relevant personnel.
<b>12. The Council should create and implement a standard set of billing guidelines and require outside consultants to comply with these requirements.</b>	<ul style="list-style-type: none"> <li>* Creates potential cost savings by enhanced oversight of outside consultants.</li> <li>* Reduces time required by CURO Director to review invoices, thereby creating additional opportunity to lead on regulatory matters.</li> </ul>	CURO needs to develop and implement standardized system.

How can the City improve its regulatory approach and processes to increase transparency and effectiveness?		
Recommendation	Key Benefits	Potential Issues
<b>13. The Council's hearing officer should provide recommendations on disputed matters.</b>	<ul style="list-style-type: none"> <li>* Allows Councilmembers to focus on summary document and exceptions.</li> <li>* Helps establish roles and functions of internal staff and outside consultants.</li> </ul>	Determine whether the hearing officer/AJ function should be internalized.
<b>14. The City should establish a permanent Public Advocate for utility customers.</b>	<ul style="list-style-type: none"> <li>* Provide advocacy for residential customers and small businesses vs. the overall public interest.</li> <li>* Enhanced transparency of regulatory process as a result of additional review of filings/data.</li> </ul>	Determine who fulfills this role, how they are selected, and dedicate funding.
<b>15. The City should represent its interests as a utility customer.</b>	* City spends approximately \$11 million per year on utilities expenses and should protect its own interests as a consumer.	No resources in place to perform this task.
<b>16. The City should conduct utility audits as required by law.</b>	* Provides additional information about utility operations to public, Public Advocate, and CURO.	Determine if there are other audits that become unnecessary due to this audit activity.
<b>17. The Council should strengthen ex parte rules.</b>	* Improves transparency of regulatory process and decreases the perception of "back-room deals."	Develop method for decision-makers to obtain information needed to make regulatory decisions.
<b>18. The Council should bifurcate regulatory personnel.</b>	* Improves transparency of regulatory process and ensures that the parties' positions are thoroughly vetted for accuracy.	Determine when and how to assign trial vs. advisory roles. Identify role of Advisors.

<b>19. The Council should establish a process for regular management audits of its regulated utilities.</b>	* Identifies potential areas in which utilities can improve operations outside the context of a rate case.	Time intensive and requires sustained commitment by Council, CURO, and the regulated utilities.
<b>20. The Council should develop and implement an electronic filing system and post documents and information related to regulatory matters on an enhanced website.</b>	* Provides information to all utility customers and stakeholders.	Develop work plan and budget to initiate project.

TBG notes that many of these recommendations may be implemented independent of each other; however, some are closely related. Recommendation 1 affects most other recommendations. Recommendations 6, 7, and 9 deal with allocation of work between internal and external resources. Recommendations 17 and 18 are related as it is impossible to have meaningful ex parte restrictions without a bifurcated staff. Other recommendations support one another without being necessary (e.g., increasing staff and training). None of these recommendations oppose each other; therefore, all can be adopted without conflict.

## APPENDIX A. CONSULTANT BIOGRAPHY

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David Magnus Boonin, Founder and President of TBG Consulting ([www.TBG-Consulting.com](http://www.TBG-Consulting.com)), is a nationally recognized thought leader in the fields of public utility regulation, strategy, and planning with a diverse background as a senior manager of a competitive energy company, a utility commissioner, a manager of a regulated utility, a policy director, and economist. During his four decades of experience, Mr. Boonin has developed and implemented many improvements to regulatory and planning protocols that have increased the efficiency and effectiveness of regulation and of the delivery of utility services. In addition to his consulting activities, Mr. Boonin has served, in part, as:

- **Principal for Electricity and Multi-Utilities for the National Regulatory Research Institute**, where he provided cutting edge advice and insights to the nation's retail public utility regulators on numerous substantive and procedural issues.
- **Commissioner and Executive Director for the Philadelphia Gas Commission** (the nation's largest municipally owned gas utility), where he improved the utility's efficiency, established a public advocate function, increased transparency, and created public confidence in a regulatory agency that was riddled with inferior conduct.
- **Director of Utility and Regulatory Affairs for the City of Philadelphia**, where he developed low-income energy programs that saved lives and addressed the City's energy needs including street lighting and budgeting issues.
- **Supervisor of Energy Demand and Economic Forecasts for the United Illuminating Company**, where he created new analytical metrics and processes, allowing for the objective consideration of resources.
- **Chief of the Economic Impact and Analysis Division and Economist to the Chairman for the Pennsylvania Public Utility Commission**, where he managed Commission's economic policy staff; performed strategic and financial analysis; led efforts to address issues such as resource deployment, regulatory incentives, energy strategy, power pools, development alternative resources and rates; and created improvements to state-of-the-art utility planning methods. He co-led on the Commission's response team to the TMI accident.

Mr. Boonin earned a Bachelor of Science degree in Economics from the Wharton School of Business at the University of Pennsylvania and a Master's degree in Economics from Brown University. He has published numerous papers, made presentations at national and regional conferences, and presented expert testimony on a broad range of regulatory issues.

## APPENDIX B. REQUEST FOR QUALIFICATIONS ELECTRIC AND NATURAL GAS REGULATORY SERVICES

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### **NEW ORLEANS CITY COUNCIL REQUEST FOR QUALIFICATIONS ELECTRIC AND NATURAL GAS REGULATORY SERVICES**

THE NEW ORLEANS CITY COUNCIL IS SOLICITING STATEMENTS OF QUALIFICATIONS FOR PROFESSIONAL ELECTRIC AND NATURAL GAS REGULATORY CONSULTANTS FIRMS TO PROVIDE CONSULTING SERVICES AND ADVICE TO THE CITY COUNCIL AND ITS UTILITY COMMITTEE REGARDING MATTERS ASSOCIATED WITH ENTERGY NEW ORLEANS, INC. (ENO) AND ENTERGY LOUISIANA, LLC (ELL) IN THE PROVISION OF ELECTRIC AND NATURAL GAS SERVICES IN ORLEANS PARISH AND TO ADDRESS A BROAD RANGE OF UTILITY ISSUES AS THEY ARISE. BOTH ENO AND ELL ARE WHOLLY OWNED SUBSIDIARIES OF ENTERGY CORPORATION (ENTERGY), A MULTISTATE HOLDING COMPANY. A COMPLETE COPY OF THE REQUEST FOR QUALIFICATIONS IS AVAILABLE AT THE CITY COUNCIL'S WEBSITE AT [www.nolacitycouncil.com](http://www.nolacitycouncil.com). COMPLETE STATEMENTS OF QUALIFICATIONS MUST BE RECEIVED BY THURSDAY, OCTOBER 27, 2011 at 3:00 P.M.

FOR FURTHER INFORMATION AND THE REQUEST FOR QUALIFICATIONS PACKET PLEASE CONTACT:

**COUNCIL CHIEF OF STAFF  
1300 PERDIDO STREET - ROOM 1E06  
NEW ORLEANS, LA 70112  
E-Mail: [efpugh@nola.gov](mailto:efpugh@nola.gov)**

**REQUEST FOR QUALIFICATIONS STATEMENTS (“RFQ”)**  
**ELECTRIC AND NATURAL GAS REGULATORY SERVICES**  
**ISSUED SEPTEMBER 23, 2011**

Pursuant to the provisions of the Council of the City of New Orleans’ Motion M-11-406, dated September 1, 2011, regarding the need for legal and technical consultants to advise and represent the Council on electric and gas utility matters, and in accordance with paragraph 1 of Rule 45 of the Code of the Council of the City of New Orleans, the City Council is seeking Statements of Qualifications from qualified legal, engineering and technical professionals to perform such work for consecutive one year calendar periods for up to five (5) years.

**Purpose**

The Council for the City of New Orleans (Council), in accordance with Section 3-130 of the New Orleans Home Rule Charter, and the Louisiana Constitution, acts as retail regulator for electric and gas utility services in Orleans Parish, Louisiana.<sup>1</sup> It regulates Entergy New Orleans, Inc. (ENO) and Entergy Louisiana, LLC (ELL) in the provision of electric and natural gas services in Orleans Parish. Both ENO and ELL are wholly owned subsidiaries of Entergy Corporation (Entergy), a multistate holding company.

The Council Utilities Committee (CUC) serves as the Council Committee responsible for making recommendations to the full Council on all electric and natural gas regulatory issues. The Council Utilities Regulatory Office (CURO), under the direction and supervision of the Council’s Chief of Staff, is the administrative office of the Council responsible for providing in-house staff to the Council on these same issues and works with the legal and technical consultants retained by the Council to carry out and fulfill the Council’s regulatory responsibilities, based on advice of legal and technical consultants retained by the Council. At present, the CURO is understaffed. The CUC anticipates receiving support and guidance from all legal and technical consultants in creating capacity and functionality of in-house CURO staff.

As a retail regulator, the Council has exclusive jurisdiction over the rates, reliability, and terms and conditions of service in Orleans Parish. In addition to its own conduct of administrative hearings and local regulatory process(es), the Council is also an active participant in numerous Entergy regulatory matters before the Federal Energy Regulatory Commission (FERC), federal and state courts and in such matters before Congress as it determines can have an effect on utility regulatory policy and New Orleans’ specific matters.

**Qualifications Statement Contents**

All responses should include:

- I. A completed “consulting services questionnaire” using the format that is attached.

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1 See Home Rule Charter of the City of New Orleans as Amended through October 2, 2010 at <http://www.nolacitycouncil.com/docs/resources/2011HomeRuleCharter.pdf>. Further please see the Code of Ordinances of the City of New Orleans Louisiana. Chapter 158 Utilities, at <http://www.municode.com/resources/gateway.asp?pid=10040&sid=18>

Any subcontractors proposed to be used must also submit a completed questionnaire that must be attached to the prime firm's questionnaire.

II. Professional experience and resumes of partners, principals and employees in the firm who will be responsible for, and actively involved in, the provision of professional services for the Council (Key Personnel), including the appropriate evidence of accreditation, certification and licensing in the stated profession, and

A. For legal consultants:

1. specific case listings of trial and regulatory experience before federal, local and state authorities in electric and gas utility matters;
2. experience advocating or consulting regarding legislative and regulatory policy before federal, state, and local authorities in electric and gas utility matters; and
3. specific case listing of expert testimony provided before federal and state courts and regulatory bodies in electric and natural gas matters;

B. For engineering consultants:

1. Expertise and/or experience in the following areas: utility engineering and system planning, transmission delivery and planning; transmission reliability criteria; engineering-economic analyses; economic/financial feasibility studies; utility financing; regulatory accounting; electric fuel and natural gas adjustment clauses; utility franchise matters; revenue requirements, functionalization, cost allocation, rate design and cost of service development for utility ratemaking; utility appraisals and acquisitions; and customer service regulations; including, where applicable, specific case listing of expert testimony and the matters testified thereto that were sponsored before federal and state courts, agencies and regulatory bodies in electric, natural gas and thermal energy matters.

C. For accounting consultants:

1. Expertise and/or experience in the following areas: Federal Energy Regulatory Commission (FERC) Uniform System of Accounts utility accounting, utility financing, financial auditing and sampling (including electric fuel and natural gas adjustment clauses, inter-affiliate transactions, accumulated deferred income taxes, and storm costs), financial statement auditing and evaluation, including, where applicable, specific case listing of expert testimony and the matters testified thereto that were sponsored before federal and state courts, agencies, and regulatory bodies in financial accounting matters.

III. Description of relevant experience and expertise of each of the Key Personnel

listed in paragraph II hereinabove including but not limited to:

- A. Ratemaking, cost allocation, audit, utility mergers and acquisitions, inter-affiliate transactions, transmission access and ratemaking proceedings arising before the FERC pursuant to the Federal Power Act, Natural Gas Act and Natural Gas Policy Act and before local and state regulatory authorities;
- B. Electric utility resource and transmission planning, management auditing, rate design, cost of service, service regulations and reliability of service issues, finance and accounting matters, including litigation and expert testimony before the FERC, state, and local regulatory authorities;
- C. Power purchase agreements, Feed in Tariffs, Renewable Portfolio Standards, NERC related delegation agreements, interconnection and operating agreements, and agreements between the operating subsidiaries of Registered Holding Companies, including the principles of generation and transmission reserve sharing, reserve equalization, energy pool dispatch and the cost allocation principles employed in support thereof;
- D. Independent Coordinator of Transmission (ICT) arrangements, Regional Transmission Organizations (RTO's), Independent System Operators (ISO's), and regional power pools pursuant to the FERC and the North American Electric Reliability Corporation (NERC) guidelines, including Day 2 Capacity Markets and locational marginal pricing;
- E. Registered Holding Companies subject to the jurisdiction of the SEC and FERC;
- F. Natural gas LDC system design and planning, management auditing, rate design, cost of service, policies for provision of service and related reliability issues, finance and accounting matters, including expert testimony and litigation before the FERC, state, and local regulatory authorities;
- G. Energy efficiency initiatives, such as development, application and administration of electric utility net metering regulations and standards, demand-side management and energy conservation programs, advanced metering infrastructure, and integrated resource planning;
- H. Inter-affiliate transaction issues, including codes of conduct and principles of cost allocation for service provided by affiliates to regulated utilities;
- I. Knowledge and experience with Entergy New Orleans' system agreement and disaster recovery matters.
- J. Municipalities' acquisition of local distribution facilities and investor owned utility mergers and acquisitions;

- K. NERC's and Regional Reliability Entities' standards and requirements, FERC and NERC penalty process, and the NERC and RRE audit process; and
  - L. The fostering of economic development in utility ratemaking, economic development incentives, and commercial and industrial expansion/relocation.
  - M. The integration of diverse renewable generators onto the grid.
  - N. State and Federal environmental rules and regulations that impact the operation and dispatch of electric generating units.
- IV. A description of three or more assignments which best illustrate the respondent's current qualifications relevant to the areas requested in this RFQ, including samples of work product and/or testimony.
- V. Demonstrated ability to provide coverage for City Council matters when the principal consultant is unavailable because of other assignments, illness, vacation or similar conflicting demands.
- VI. A sworn affidavit listing all persons with an ownership interest in the respondent. An "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that hold an interest in a publicity traded corporation. This affidavit is a public record.
- VII. A sworn affidavit that no other person holds an ownership interest in the respondent via a counter letter.
- VIII. A list of all persons, and/or firms, who are retained by the respondent at the time of the application and/or who are expected to perform work as sub-contractors in connection with respondent's work.
- IX. A list of professional labor fees for all personnel included in the respondent's response to this RFQ and a clear and concise statement that such professional labor fees throughout the contract term will be the most cost efficient and will not exceed the lowest professional labor fee for similarly situated clients of the firm.

#### **Potential Conflict of Interest**

Any firm providing a response to this RFQ shall disclose the following:

- I. Work performed in ratemaking, utility accounting, cost allocation, transmission access, reserve sharing and energy pool dispatch, acquisition and merger proceedings, and litigation for an Investor Owned Utility within the past ten years.

- II. Any work performed for any industrial, commercial or residential ratepayer (or groups and associations thereof) in Orleans Parish or in the service area of any of Entergy's operating subsidiaries, currently and in the past five years, on electric and natural gas matters.
- III. Any work performed for any other regulator of Entergy Corporation and/or Entergy and/or any of Entergy's operating subsidiaries.
- IV. Any prior or existing services not listed above being provided to any utility-related government entities, including but not limited to public service commissions, RTGs, RTOs, regional power pools, etc., within the last five years.
- V. Any work currently performed or being performed (whether compensated or not) on behalf of any Councilmember.
- VI. Any work performed for independent power producers or power marketers who have sold or offered to sell power to any of Entergy's operating subsidiaries.

For any such work performed, the respondent shall indicate the scope of the engagement, the time frame, the amount of compensation received and why the respondent deems such work to be or not be in conflict with the interests of advising or representing the Council or its committees in utility regulatory matters. The Council shall make the final decision as to whether any conflict exists.

#### **Evaluation Criteria**

Upon receipt by the due date of responses to this RFQ by qualified firms, the Council's staff Selection Review Committee will evaluate all responses received based upon the criteria listed herein and in Council Rule 45, a copy of which is attached. Particular emphasis will be placed on the following criteria:

- I. Experience of the Key Personnel and other professional personnel in the utility regulatory field and demonstrated ability to provide cost effective services to the Council.
- II. Quality of work samples presented.
- III. Clear understanding by the applicant of work to be performed.
- IV. Capability and experience in providing consistent, timely and cost-effective services, as determined by information requested from references or the Council's actual experience.
- V. Cost based on hourly rates of consultants at various levels of expertise and experience.
- VI. Involvement at the professional level of certified disadvantaged business enterprises as evidenced by government-issued certification thereof and in compliance with City Code Section 70-432.1 (attached).

- VII. Insight into ways to increase CURO size and capacity for both cost savings reasons and advancement of progressive policies.
- VIII. Use of local resources.
- IX. Willingness to accept a “not to exceed cost” figure.

### **RFQ Process**

Except as provided herein, no written, electronic or oral communications from potential applicants regarding this RFQ shall be made to any Councilmember, city employee or Council staff person during this Request for Qualifications process. Any inquiries shall be made in writing or by e-mail to the Council Chief of Staff, Room 1E06, City Hall, 1300 Perdido Street, New Orleans, LA 70112 or [efpugh@nola.gov](mailto:efpugh@nola.gov).

Fifteen (15) copies of the submission, including samples of work products, must be submitted in hard copy form no later than 3:00 p.m. on Thursday, October 27, 2011 to the City Council Utilities Regulatory Office, Room 6E07 City Hall, 1300 Perdido Street, New Orleans, LA 70112. Where possible, an electronic version of the proposal should also be submitted to [efpugh@nola.gov](mailto:efpugh@nola.gov).

An evaluation committee composed of the Council Chief of Staff, the Council Research Officer, the Council Fiscal Officer, and/or additional knowledgeable persons appointed by the Council Chief of Staff pursuant to Council Rule 45 will review and evaluate the submissions, and select qualified proposals for referral to the Council Utility Committee. For each submission selected for referral, the staff committee will contact one or more of the persons suggested as references.

The Inspector General shall be notified in writing prior to any meeting of a selection or negotiation committee relating to the procurement of goods or services by the city, including meetings involving third party transactions. The notice required shall be given to the Inspector General as soon as possible after a meeting has been scheduled, but in no event later than twenty-four hours prior to the scheduled meeting. The Inspector General may attend all city meetings relating to the procurement of goods or services as provided herein, and may pose questions and raise concerns consistent with the functions, authority and powers of the Inspector General. An audio recorder or court stenographer may be utilized to record all selection or negotiation committee meetings attended by the Office of the Inspector General.

The report of the evaluation committee will be provided to the Council Utility Committee, comprised of three (3) Councilmembers and an alternate member. The Council Utility Committee may elect to interview up to three of the respondents selected by the evaluation committee. The Council Utility Committee shall make its recommendations to the City Council. The contractor must be selected by Motion of the Council. The selection process must be completed by December 31, 2011 when the current contracts will expire.

### **Length of Contract**

All contracts are for a twelve month period. However, the Council may renew the contract for four additional twelve month periods, assuming continuing need for the services and mutual satisfaction. Each respondent is to include in its submittal a clear and concise statement of those

personnel and firm resources for which it is willing and can commit to make available for the Council's regulatory activities during such period.

**Additional Information**

1. The City of New Orleans is not liable for any costs incurred prior to entering into a formal written contract. Any costs incurred in the preparation of the statement, interview, or other pre-contract activity are the responsibility of the person submitting the statement.
2. All submissions become the property of the City and as such are public information.
3. The contractor will invoice the City Council on a monthly basis during the term of the contract. Work shall be detailed in increments of one-tenth of an hour.
4. Any contract awarded shall contain a provision that:
  - a. any subcontractor proposed to be retained by the respondent to perform work on the contract with the City Council must be approved by Motion of the Council. The Council may require information on ownership interests in the sub-contractor prior to approval of the sub-contractor's retention.
  - b. unless otherwise approved by the Contracting Officer of the City Council, reimbursable expenses shall be limited as follows: air transportation limited to coach fares, lodging expenses not to exceed federal per diem rate for hotels in New Orleans to the extent achievable without an official government identification for personnel; postage, overnight delivery or courier services at contractor's actual cost; facsimile transmissions and long distance telephone charges at contractor's actual cost; copies at \$0.10 per page; computerized research at contractor's actual cost.
  - c. For the attendance at all meetings of the Council, the CUC, briefings of Councilmembers, representation before any court or regulatory body, during the conduct of regulatory proceedings before the Council and other regulatory bodies, and meetings with ENO and ELL, the Council will only provide labor fee and expense reimbursement for one consultant from any applicable firm, unless otherwise specifically approved by the Contracting Officer of the City Council.
  - d. Key Personnel assigned may not be replaced without consent of the Contracting Officer of the City Council.
5. Section 2-1120 of the Code of the City of New Orleans, relative to the Office of Inspector General provides in part as follows:

"Every city contract and every bid, proposal or solicitation for a city contract, and every application for certification of eligibility for a city contract or program shall contain a statement that the corporation, partnership, or person understands and will abide by all provisions of this chapter."

## APPENDIX C. CURO DIRECTOR JOB DESCRIPTION

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**Position Description  
Director  
City Council Utilities Regulatory Office**

### **Position Summary**

This is a highly responsible professional unclassified position reporting to the Council of the City of New Orleans (Council) through the Chairs of its Council Utility Committee (CUC) and Cable and Telecommunications Committee (CTC). The position entails directing and active participation in the activities of the City Council Utilities Regulatory Office (CURO), which is the office responsible for administering the Council's constitutional and City Charter (Charter) authority in the Council's "supervision, regulation and control" of public utilities in Orleans Parish in addition to the review, granting and monitoring of franchises and permits for the use of public rights of way.

The role of the Director is that of the staff advisor to the Council on all policy and franchise authority matters in the exercise of its regulatory responsibilities; the administrative direction and management of legal and technical consultants retained by the Council (to assist it in the exercise of its authority) and their associated contracts and work activities; supervision of office staff; and staff liaison with local and state officials, including other state regulators, as well as federal agencies including the Federal Energy Regulatory Commission (FERC), Securities and Exchange Commission (SEC), The Federal Communications Commission (FCC) National Association of Regulatory Utility Commissions (NARUC), and the City of New Orleans' (City) state legislative delegation and the Louisiana congressional delegation.

The Director will act as a liaison between the City Council and the city's law department and other departments, boards and commissions in matters concerning the franchising and regulating of cable television providers, common carriers, telecommunications providers and public utilities. The Director will also act as a liaison between the City Council and the cable television providers, common carriers, telecommunications providers and public utilities.

The Director will assist the City Council in acquiring and managing communications technologies and related infrastructure which support the communications goals established by the City Council. This includes managing the technical infrastructure and operations built through the Government Access Capital Fund, the Cox franchise contribution and other funding sources.

### **Minimum Qualifications and Experience**

Qualified candidates should possess, at a minimum, a law degree. Qualified individuals must also have an understanding of regulatory rate proceedings and litigation support requirements before state public service commission or the FERC.

Qualified candidates shall have a minimum of seven years demonstrated prior professional experience with an electric or gas utility, law firm, telecommunications provider, utility consulting firm, or a state/federal regulatory commission with a combination of seven years of

progressive experience in at least four of the following areas.

1. Regulatory policy analysis
2. Regulated utility or telecommunications company financial analyses, economic/financial evaluations
4. Supervision, administration and management of the regulatory function, including contract administration and its attendant procedures
5. Purchase gas adjustment and fuel adjustment clauses and their operation and design
6. Development, preparation, and/or sponsorship of expert testimony in litigated utility regulatory proceedings
7. Current understanding of the regulation, structures and issues affecting the electric, natural gas, or telecommunication industries
8. Development and administration of utility or telecommunication franchises and permits
9. Analysis of legal and regulatory decisions affecting electric and gas utilities and telecommunication providers
10. Familiarity with utility revenue requirements and cost-of-service analyses and their objectives
11. Design, development and implementation of energy conservation and demand side management programs and associated funding
12. Home Rule Charter and city law
13. Development of regulatory orders and legislative instruments
14. Experience on regulatory issues dealing with multi-state utility holding companies and their operating subsidiaries
15. Extensive knowledge of research methods, sources and techniques
16. Knowledge of operating procedures, practices and regulations applicable to administrative agency practice and utility regulation
17. Knowledge of government budgetary and administrative principals, controls and procedures
18. Design, development and execution of policies and plans which affect the communications infrastructure of public bodies or agencies.

## **Skills**

Articulate, with demonstrated common sense and the ability to deal with elected officials and the general public. Must be able to work, with a minimum of supervision, on a wide variety of projects, sometimes concurrently. Strong quantitative skills. Demonstrated computer knowledge. Good communication skills, verbal and in writing. Ability to interface well and willing to contribute to a team concept in the administration and supervision of the Council's outside utility and telecommunication consultants.

## **Professional Registration**

Qualified individuals must be licensed in the practice of Law in the State of Louisiana, or at a minimum, demonstrated experience and career progress toward becoming licensed in Louisiana within one year of employment.

## **Responsibilities and Duties**

The responsibilities and duties of this position include:

1. The review, monitoring and evaluation on an ongoing basis utility and telecommunication regulatory/franchise related activities on a local, state, regional and national level through the review of various regulatory materials.
2. The review and understanding of the City's Home Rule Charter and various laws, ordinances and resolutions related to the Council's exercise of its authority in the Council's supervision, regulation and control of public utilities in Orleans Parish, including the administering and issuance of franchises and permits.
3. Develop and make recommendations to the Council on policy issues on all aspects of the Council's powers of supervision, regulation and control of utilities and telecommunication providers in Orleans Parish as may be appropriate.
4. Investigate, review and advise the Council, in coordination with the Council's outside consultants, on changes in rates and services and other requests of utilities and telecommunications providers subject to the Council's authority and powers.
5. Assist in the development of legislative instruments for consideration by the Council.
6. Interface on an as needed basis with the Chairs of the Council Utility Committee and Cable and Telecommunications Committee.
7. Assist the Council in the handling of consumer complaints under established Council procedures and protocols.
8. Manage and coordinate ongoing activities of Council's outside consultants including recommendations on policy and procedure and establishment of priorities.
9. Preparation and administration of a \$6,500,000 annual budget and the management and control of outside consultants employed by the Council.
10. Attendance at all Council, CUC and CTC meetings as required.
11. Briefing Council members on utility and telecommunication matters presently under consideration by the Council.
12. Disbursement of public information on behalf of the Council on utility and telecommunication issues including liaison with the community, the utilities, telecommunication providers, various City agencies and departments and community groups on behalf of the Council and individual Council members.
13. Supervision of the staff of CURO.
14. Such other duties as may be assigned from time to time by the City Council, the Chairs of the CUC and CTC, and the City Council Chief of Staff

## **Salary**

Commensurate with experience.

## OFFICIAL COMMENTS FROM THE NEW ORLEANS CITY COUNCIL AND EXECUTIVE BRANCH OF THE CITY OF NEW ORLEANS

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City Ordinance Section 2-1120(8)(b) provides that a person or entity who is the subject of a report shall have 30 days to submit a written explanation or rebuttal of the findings before the report is finalized, and that such timely submitted written explanation or rebuttal shall be attached to the finalized report.

On May 13, 2015 the OIG distributed an Internal Review Copy of this report to the entities who were the subject of the report and gave them an opportunity to comment on the report prior to the public release of this Final Report. Comments were received from the New Orleans City Council and the City of New Orleans; these comments are attached in this section of the report.

The OIG would like to clarify the following points from the Council's response letter:

**Recommendation 1:** In its response, the Council stated, "the Report confirms that there is no waste, fraud or abuse in the system." This assertion ignores the analysis showing that the Council incurred higher than necessary regulatory costs because it chose to outsource nearly all of its regulatory activities to outside consultants rather than use in-house personnel. The Council's wholly outsourced regulatory approach resulted in four attorneys billing utility customers an average of \$2.4 million per year between 2011 and 2013 and four technical consultants billing an average of \$1.4 million per year during the same period. However, many of the activities they performed were routine and within the capacity of an in-house staff. The Council's outsourced regulatory approach also resulted in several junior-level personnel billing utility customers in excess of \$150,000 per year even though those services could have been provided by in-house staff at a lower cost. Both of these examples are indicative of a system with excessive and unnecessary regulatory costs.

In regard to fraud and abuse, the insular nature of the regulatory process (i.e., the limited number of participants combined with a lack of meaningful ex parte restrictions and no separation of duties for the outside consultants) prevents the ability to detect impropriety. If fraud or abuse occurred, the Council had no tools in place to identify it because the same individuals who provide testimony, introduce evidence, and perform analyses shift their role and advise the Council on how to proceed. Generally, their activities go unchecked by any entities with adequate capacity and expertise to evaluate their findings and recommendations.

The report recommended implementation of safeguards to increase transparency and ensure that the regulatory framework is designed to encourage fair and impartial decision-making. It would be a mistake for the Council to assume that preventative controls are unnecessary because instances of fraud or abuse have not been identified.

In its response, the Council stated, “the question of who should be the utility regulator in New Orleans should be settled in favor of keeping the current structure.” However, the recommendation and discussion within the report notes that New Orleans should retain local regulatory authority until there is a better understanding of how the city’s utility customers will be affected by the dissolution of the System Agreement and transition to MISO. The recommendation was not intended to apply in perpetuity.

**Recommendation 4:** In its response, the Council asserts that the recommendation to explore the potential benefits of consolidating ENO with the other Entergy utilities operating in Louisiana is inconsistent with the report’s recommendation to retain local regulatory authority until there is further clarity on changes to the Entergy companies (Recommendation 1). The Council’s response stated, “there are no benefits to be gained by New Orleans ratepayers from this recommendation.” However, no formal study or evidence of this conclusion was provided to OIG/TBG and the recent changes to the System Agreement and transition to MISO warrant exploration of the benefits and costs of this possibility.

Furthermore, the recommendation acknowledged that any such consolidation would need to include adequate protections to ensure that the City’s customers are not allocated a disproportionate share of costs compared to residents in other parts of the state.

**Recommendation 6:** In its response, that Council notes its reduction of accounting firms from two to one. Based on 2013 contract amounts, this would represent a 3 percent reduction in the Council’s contracts with outside consultants. Nevertheless, nearly all of services provided by the outside accounting firms was routine and within the capacity of an in-house staff at a lower cost.

In addition, it should be noted that the managing attorney from Wilkerson and Associates acknowledged during an interview that many of the services provided by the Council’s outside consultants, including his own, could be reasonably performed by internal staff. Wilkerson and Associates’ contract is valued at nearly \$900,000 per year.

**Recommendation 7:** In its response, the Council confuses the report’s general staffing recommendation (i.e., in-house staff for routine activities supplemented by outside consultants

for specialized activities, as needed) with a discussion about LPSC's approach, or lack thereof, on energy efficiency matters.

To clarify, the report states that regulatory commissions throughout the country use a mix of internal and external resources; New Orleans should be no different. Routine regulatory activities should be assigned to in-house staff and specialized activities should be assigned to consultants within their field of expertise. Many of these activities, such as FERC litigation, fall squarely within the expertise of the Council's existing team of consultants. Others, such as integrated resource planning and other energy efficiency matters, should be assigned to policy experts in those particular fields.

The Council's response also states that the report makes no case for reducing the contracts awarded to Dentons (\$3.3 million per year) and Legend (\$2.3 million per year). However, the report detailed how the use of outside consultants for nearly all regulatory activities resulted in higher than necessary regulatory costs and prevented the Council from developing institutional knowledge regarding critical regulatory issues.

**Recommendation 9:** In its response, the Council states that it is considering ways to increase in-house capacity consistent with Civil Service requirements. Although the OIG takes no position on the issue, evaluators did not find any evidence that these positions must be classified. Information regarding sample job descriptions and salary ranges is readily available from the National Association of Regulatory Utility Commissioners (NARUC) and on the websites of state-level regulatory commissions throughout the country.

**Recommendation 13:** In its response, the Council asserts that the legality of its hearing officer approach (non-ALJ) has been legally tested in the past. However, the report did not challenge the *legality* of the Council's approach. The recommendation was designed to improve the Council's regulatory process because it would help separate the duties of regulatory personnel and improve Councilmembers' ability to focus on the contested issues in rate cases (and other non-FERC matters that fall within the Council's regulatory authority) in an orderly and efficient manner.

The Council's response states there have not been any complaints about the hearing officer configuration and that the recommendation is in search of a problem. This assertion ignores the reality that the primary participants in the regulatory process have been the outside consultants and the utilities. The insular nature of this approach leaves the public and other parties unable to consider alternatives.

**Recommendation 17:** In its response, the Council states, “Councilmembers can and should hear from all constituents and stakeholders on matters of concern to them.” The report does not assert that Councilmembers should not solicit the viewpoints of these individuals. However, it is important to ensure that all parties have an opportunity to review and comment on these discussions to ensure that the information is accurate. The absence of effective ex parte controls allows for information conveyed in off-the-record conversations to introduce bias and/or impropriety into the regulatory process.

The Council’s response also referred to a legal opinion provided by one of the outside consultants regarding the stage at which the ex parte restriction outlined in the City Code is activated. The OIG asked for a written copy of the legal opinion and none was provided. Nevertheless, the context of the ex parte discussion and recommendation were about how to improve the transparency of the regulatory process and ensure the decision-making process is fair and impartial.

Finally, the Council’s response states, “the Council is a legislative body, not a tribunal.” However, the process for regulatory proceedings described in Chapter 158 of the City Code clearly resembles a judicial proceeding complete with pleadings (Sec. 158-321), motions (Sec. 158-324), testimony (sec. 158-478), depositions and discovery (Sec. 158-392), evidence (Sec. 158-476), and hearings (Sec. 158-431). Simply because the Council settles most cases prior to the commencement of a formal hearing does not mean it is appropriate to carry out its regulatory function using a legislative approach for contested matters.

**Recommendation 18:** In its response, the Council states, “this recommendation would necessarily increase the size of the staff and create a bureaucracy without any commensurate increase in productivity.” The concepts of separation of duties and checks and balances in the regulatory process should not be interpreted as needless bureaucracy. Separating duties of regulatory personnel and implementing meaningful ex parte restrictions is designed to protect the integrity of the regulatory process.

The Council also repeats its statement that there have been no claims about the current approach. Again, the primary participants in regulatory process have been the outside consultants and the utilities. There is no entity in place with adequate resources and expertise to detect any errors or biases in the activities performed by the outside consultants. Furthermore, some of the consultants have been providing regulatory services to the Council for almost 30 years.

## RESPONSE FROM THE NEW ORLEANS CITY COUNCIL

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JASON ROGERS WILLIAMS  
COUNCILMEMBER-AT-LARGE

Office (504) 658-1070  
Fax (504) 658-1077  
1300 Perdido Street • Room 2W50  
New Orleans, Louisiana 70112

*New Orleans City Council*

June 12, 2015

Mr. Ed Quatrevaux  
Inspector General  
525 St. Charles Avenue  
New Orleans, LA 70130

Re: Council Response to OIG's Report

Dear Mr. Quatrevaux,

The Council would like to thank you for the opportunity to review and respond to your report on The Council's Utilities Regulation prepared in conjunction with your consultant, TBG.

The Council is fully committed to protecting the ratepayers of New Orleans while assuring excellent service quality from the utilities we regulate. Therefore, it is vital to provide information to deliver clarity to points of concern found in your report. In addition to the Management Response Form provided in your report, attached is a detailed response giving explanation as to why the recommendations were accepted or rejected, a list of accomplishments achieved or are currently ongoing with the Utilities, Cable, Telecom and Technology Committee (UCTTC) and concerns we found regarding the report.

The Council looks forward to our full response being published as a part of your report. We will continue to work with you and your staff on this and all reports you publish. Please let us know if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "JRW".

Jason Rogers Williams  
President New Orleans City Council  
UCTTC Chairman

## Council's Response to the OIG's Report on Council Utilities Regulation

The Council notes that the OIG investigation reveals that Regulation in New Orleans has been effective and that there have been no improprieties. The Council further notes the data used to compile this report covers a time period that pre dates the tenure of the current Chair of the new Utility Cable Telecom and Technology Committee (UCTTC). The last interview between the OIG's consultant and any Utility Advisor to the Council was held in the first quarter of 2014. Given that this data and these interviews predate the present UCTTC's leadership and a number of the OIG's recommendations have already been independently instituted by the Council, prior to the issuance of this report.

The Council is appreciative for the opportunity to review and respond to the OIG's report based on the investigation performed by the OIG's consultant, TBG Consulting (TBG).

### OIG Recommendations and Council Responses

#### Recommendation #1

The Council should retain its Regulatory Authority at least until there is further clarity about the dissolution of the System Agreement and the transfer to MISO.

#### Council Response

The Council accepts this recommendation, but would go further.

The Council believes that it has done an exemplary job as the utility regulatory body, a conclusion supported by the Report. Moreover, as the Council expected, the Report confirms that there is no waste, fraud or abuse in the system.

Therefore, given the unfortunate history of the negative impact of LPSC regulation for New Orleans ratepayers, the question of who should be the utility regulator in New Orleans should be considered settled in favor of keeping the current structure.

### **Recommendation #2**

The Council should work cooperatively with the LPSC on System Agreement and MISO issues to benefit utility customers in both regulatory jurisdictions.

#### **Council Response**

The Council accepts this recommendation.

The Council has always worked cooperatively with all stakeholders in the best interest on the New Orleans ratepayers. The Council took the lead in both System Agreement and MISO negotiations to protect against the railroading of New Orleans ratepayers. But for the Council's efforts New Orleans ratepayers would have been forced into bearing unfair cost under a single transmission pricing zone (TPZ) with inadequate generation resources for the future. As a result of Council efforts, with vital input from its advisors, a fair and equitable agreement among the parties is currently within reach. To achieve this end, the Council and its Advisors have combined cooperation with forceful advocacy to foster the process while always protecting the interests of the New Orleans ratepayers.

### **Recommendation #3**

The Council should explore the possibility of Entergy merging ELL Algiers with ENO.

#### **Council Response**

This recommendation is moot.

The Council, through its Advisors, has for several years been working to incorporate Algiers into ENO to create a single electric utility subject to the singular regulation of the Council in a manner fully beneficial to all New Orleans ratepayers. An agreement to bring this merging to fruition has been struck and the Council has recently approved the agreement and the procedure to bring the matter to conclusion at the May 14, 2015 committee meeting.

#### **Recommendation #4**

The Council should explore the potential benefits of consolidating all three Entergy Companies operating in Louisiana into a single entity.

#### **Council Response**

The Council rejects this recommendation as theoretical and not practical. Just as New Orleans interests would be dwarfed by the rest of the state if regulatory authority were vested in the LPSC, combining ENO with ELL/EGSL would have the same effect. Having a discreet entity solely focused on providing service to New Orleans is extremely beneficial to New Orleans ratepayers. An ELL/EGSL entity would never be as responsive to local needs if New Orleans was a relatively small part of its total customer base. Moreover, such a combination would effectively preclude or largely diminish the regulatory role of the Council. Indeed, this recommendation is inconsistent with the prior recommendation to keep regulatory authority with the Council. There are no benefits to be gained by New Orleans rate payers from this recommendation.

#### **Recommendation #5**

The Council should officially designate a leader of the Advisory Team and in-house Staff

#### **Council Response**

The Council accepts this recommendation favorably as it had already taken such action prior to this report and will plan to go further.

The Council has designated the Chair of the UCTTC as the leader of the Advisory Team and effective under the leadership of Councilman Jason Williams the Director of CURO is designated the in-house Staff lead.

#### **Recommendation # 6**

The Council should discontinue some of its contracts with outside consultants.

#### **Council Response**

The Council accepts this recommendation in part.

Since May 2014, This Council and the current Chair of the UCTTC have consistently evaluated the need for a mix of consultants. The Council has recently reduced the number of accounting firms from two to one.

Consultant contracts are awarded pursuant to exhaustive and highly competitive RFP process every five years, with annual reviews and renewals. Utility committee members work closely with the utility consultants almost on a daily basis. The process provides the committee and ultimately the Council with abundant real-world experiences in determining the effectiveness of the Advisors.

In addition, the Council notes that the draft report found that "the Council ha[s] done an effective job regulating the City's utilities and that much of its effectiveness can be attributed to the input and efforts of the Advisors." The Council agrees with the conclusion and finds no basis in its experience or in the Report to arbitrarily exclude outside consultants. Over time, however, as the Council evaluates the certain strategic expansion of in-house staff, more informed determinations can be made adjusting the mix of outside consultants.

#### Recommendation #7

The Council should reduce some of its contracts with outside consultants, including Dentons and Legend.

#### Council Response

The Council rejects this recommendation.

The Report makes no case for this recommendation. In fact, the one example used with respect to Dentons is an entirely baseless, forced conclusion that would put the Council's regulatory process at risk.

The Report, in support of this recommendation, argues that in-house staff would be preferable to the current use of lawyers in energy efficiency and IRP matters: "The Council's lack of in-house staff and its failure to retain issue-specific experts on energy efficiency and IRP matters meant that attorneys from Dentons

performed these services rather than energy policy analysts with specialized expertise and lower hourly rates.”

The Report notes that the LPSC follows more of the suggested in-house model on these issues. Yet, the LPSC is woefully deficient in matters of energy efficiency and IRP while the Council is a national role model.

This preference for the LPSC model undermined this entire recommendation in that the LPSC has different goals for creating and enforcing regulation regarding energy efficiency and renewable energy. Entergy Corporation has been named one of the worst utilities in the country on these issues. In a recent report evaluating 32 major U.S. utility companies on their clean energy policies, Entergy LL ranked in the bottom five in both renewable energy and energy efficiency.

Entergy LL operates under the LPSC, which uses the model is being advanced in this report.

The Delta (Louisiana) Chapter of the Sierra Club reported on a recent LPSC meeting under the headline: “Louisiana Goes for Last Place Again” and described the LPSC on energy efficiency as “...an example of Louisiana politics at its worst.” Another recent report appeared in Forbes under the headline: “Big Win for Energy Luddites in Louisiana.”

Conversely, the Council’s development and implementation of a seminal energy efficiency program (Energy Smart) has been praised as the “lone bright star” of such programs in Louisiana. The Council and its Advisors have successfully implemented the Energy Smart program with the robust input and support of a broad array of stakeholders throughout the community. In fact, ENO and the Council were awarded a 2014 Energy Star Partner of the Year Award, by the Environmental Protection Agency, for the Energy Smart Program.

#### Recommendation #8

The Council should issue topic and/or task-oriented RFPs for outside consultants.

#### Council Response

The Council accepts this recommendation in part.

The Council believes that there can be discreet instances that are suited to "issue topic and/or task-oriented RFPs." However, the Council does not believe that this is a substitute for a team of consultants who are uniquely dedicated to the Council and its regulatory process. The success of the current process is confirmed in the Report and in the experience of the Council. New Orleans has among the lowest electric rates in the country. New Orleans has a model energy efficiency program in a state that resists such programs. New Orleans has stood firm against terminating the ENO System Agreement in a manner that would crush local ratepayers. New Orleans utility regulation has been successful for rate payers and in terms of energy efficiency.

#### **Recommendation #9**

The Council should increase its internal regulatory staff.

#### **Council Response**

The Council accepts this recommendation.

The Council accepts that there are opportunities to beneficially increase its regulatory staff. In fact, the Council has been considering ways to do this consistent with civil service requirements and in the face of certain market realities. The Council will continue to study this recommendation.

#### **Recommendation #10**

The Council should invest in training of members of the UCTTC and internal regulatory staff.

#### **Council Response**

The Council accepts this recommendation.

Since May 2014 the new Committee Chair and staff already sought out and received training from various sources: Utility Commissioners/Wall Street Dialogue, National Association of Regulatory Utility Commissioners, Energy Bar Association Conference, and Organization of MISO States Training. The Council will study the costs and benefits of further training sponsored by the Council

exclusively for members and staff. The Council's actions are consistent with this recommendation.

#### **Recommendation #11**

The Council should recover all regulatory cost from ENO and ELL Algiers.

#### **Council Response**

The Council accepts this recommendation.

The Council receives this information positively and will research to see if this recommendation can properly be accomplished.

#### **Recommendation #12**

The Council should create and implement a standard set of billing guidelines and require outside consultants to comply with its requirements.

#### **Council Response**

The Council accepts this recommendation.

The Council believes that further study is necessary to determine how to structure and implement this recommendation, but supports creating and implementing a standard set of billing guidelines.

#### **Recommendation #13**

The Council's Hearing Officer should function as an ALJ and provide Councilmembers with recommendations on disputed regulatory matters.

#### **Council Response**

The Council rejects this recommendation.

The Council is a legislative body and derives its regulatory authority directly from the home rule charter. This somewhat hybrid situation has been legally tested over the years and the current regulatory regime, including hearing function, has been upheld by the Louisiana Supreme Court. Moreover, this is another

recommendation in search of a problem. There have been no stakeholder complaints with respect to the “hearing officer” configuration.

Recommendations 14-16 apply to the Administration

**Recommendation #17**

The Council should strengthen ex parte rules.

**Council Response**

The Council rejects this recommendation for the reasons stated in Number 13 above because its current rules are adequate and more importantly effective.

The Council is a legislative body, not a tribunal. Council members can and should hear from all constituents and stakeholders on matters of concern to them.

Again, this model has not generated complaints or problems. Council members can regularly hear from consumer advocates intervenors (e.g., Alliance for Affordable Energy) as well as the regulated utilities (ENO/ELL), or the utility Advisors. This enhances the Council’s legislative/regulatory function. It is also important to note that the Council prohibits campaign contributions from the regulated utility as well as from the Advisors.

**Recommendation #18**

The Council should bifurcate its regulatory personnel.

**Council Response**

The Council rejects this recommendation for the reasons stated in Numbers 13 and 17 above.

This recommendation would necessarily increase the size of the staff and create a bureaucracy without any commensurate increase in productivity. The current system works well without bifurcation. The current system has been legally tested and approved. The recommendation presumes a completely different regulatory system that does not find its authority in a home rule charter that

knowingly invests the regulatory function in the legislative body. There have been no complaints or problems resulting from a unitary staff.

**Recommendation #19**

The Council should establish a process for regular efficiency and performance evaluations of the gas and electric utilities under its regulatory jurisdiction.

**Council Response**

The Council accepts this recommendation.

The Council will study and develop a process for regular efficiency performance evaluations of the regulated utilities.

**Recommendation #20**

The Council should develop and implement an electronic filing system and post documents and information related to regulatory matters on an improved website.

**Council Response**

The Council accepts this recommendation favorably as it had already taken such action prior to this report and will plan to go further.

The Council is actually already in the process of implementing a form of this recommendation for the entire Council and all committees. The Council expects that this will continue and the UCTTC will be included.

This Council would like to point out that Utility Rates in New Orleans are dramatically below the National Average, that the Council's Award-winning Energy Efficiency Program is a model for the rest of the state and that the Council's Advisors have received considerable national acclaim. The Council's Legal Utility Advisors were just named Energy Firm of the Year by Who's Who Legal.

UCTTC accomplishments recently achieved or near completion are:

- Maintained a high level of effective regulation of ENO while continuing to maintain rates that are below national levels and among the lowest in the country on a comparative basis.
- Achieved continued and stable funding for the award-winning Energy Smart energy efficiency program, which is the only program of its kind in the state. This was done without any increase in rates.
- Achieved rate stabilization, which will continue at least through 2018 when the next ENO rate case is expected to be filed.
- Provided the catalyst and support to create a \$100 million storm securitization program, which will provide a ready reserve to fund storm restoration costs without the traditional “rate shock” that follows storm cost recovery.
- Provided the catalyst and support to achieve the consolidation of ELL Algiers customers into ENO, providing unified regulation under the Council. This will achieve regulatory efficiencies and a more responsive regulatory framework for Algiers customers. It will also allow Algiers’ customers to participate for the first time in Energy Smart and other energy efficiency programs previously limited to East Bank ratepayers.
- Oversaw the initial integration of ENO into MISO, which has resulted in a \$13 million savings in the first year in operation.
- Ongoing oversight and input into the ENO System Agreement termination process to protect New Orleans ratepayers from unfair cost shifting and future power generation uncertainty.
- Changed the dynamic in the relationship between the Council and ENO in connection with the ongoing Integrated Resource Plan (IPR) process, which has resulted in improved responsiveness and participation by ENO.
- Established a rigorous process to achieve greater storm preparation, storm hardening and infrastructure resiliency.

Furthermore, throughout the draft of the OIG’s Report we noted a number of incorrect or potentially misleading statements without explanation that were not

corrected or resolved during the exit interview with the OIG's and TBG's staff. Therefore, it is paramount that the following points are noted in addition to the Council's responses to the OIG's recommendations:

P. 7, footnote 25 says: "The merger of ELL and EGSL was approved by the Council..." Resolution R-15-16, ordering paragraph 1 states: "1. The Council will not initiate an active review of the Business Combination filing but, instead, establishes Docket UD-14-03 for the limited purpose of receiving informational filings relative to the Business Combination proceedings as they develop at the LPSC." Accordingly, consideration should be given to rephrasing this footnote.

At pp. 18-19 a comparison is made of New Orleans City Council utilities regulation with the regulation provided by LPSC. When comparing the regulatory costs that are provided, consideration should be given to providing an analysis of the comparative scope of work undertaken by the agencies during the subject period. For example, was the energy efficiency/renewable energy work undertaken by the LPSC of a similar scope to that undertaken by the Council?

At p. 50, footnote 112, it is said that the Council "lags behind many other regulatory agencies across the country in IRP and energy efficiency matters." At p. 28 it is said that Legend's (the Council's technical advisors') "...services on IRP could have been performed better and at a lower hourly rate by specialized energy policy experts." In a meeting with OIG/TBG personnel following circulation of this Internal Review Draft a general concern was raised by OIG/TBG personnel concerning the energy efficiency, renewable energy, and IRP work of the advisors. As support for these opinions, consideration should be given to providing an analysis of the Council's regulatory efforts in these areas, stating how they compare to the efforts of others, which others are being used for comparative purposes, and which work activities can be effectively performed at less cost.

At p.33 it is said: "In contrast to the CURO Director's envisioned role, there was little effort to coordinate the Advisors' activities, reducing efficiency and creating

opportunities for duplication of efforts." At p. 38 it is said that the CURO Director did not actively manage or control the Advisors, who were not subject to adequate oversight. Consideration should be given to stating the time period used in making this assessment and to explaining what regulatory work was performed by the Council during this period, the involvement in that work of the CURO Director working together with the Advisors, and the results of this regulatory effort. Consideration should be given to describing the extent to which direction provided to the Advisors by the Chairperson of the Utilities Committee contributed to results during this period, and the level of satisfaction of the Chairperson with the efforts of the CURO Director.

At p. 34 it is said "...the CURO Director had been working in this capacity for approximately two years." Consideration should be given to stating for what point in time this length of service is assigned.

At p. 38, summary paragraph 1, it is said that regulatory costs for in-house staff is charged to ENO and ELL and eventually passed on to the City's utility customers. Clarification should be provided that this has happened in the past but has not been done for a number of years.

At p. 39 it is said that utility consumers were underrepresented due to the lack of participation by the Executive Branch. Consideration should be given to clarifying whether the protections of utility consumers that were provided by the Council were deficient and if so, how.

At p. 41, footnote 100 it is said that the Council's hearing officer "...does not have experience with substantive issues related to public utility regulation" yet no reconciliation is made with the information showing the many Council utility regulatory issues he has overseen and presided over since 1998. Consideration should be given to providing this reconciliation.

At p. 42 it is said: "At minimum, all settlements should be accompanied by detailed supporting orders that justify the bottom-line findings." Consideration

should be given to explaining this is a policy issue that regulators regularly address, that the regulators' approaches vary, and while a lack of sufficient detail for settlements can frustrate transparency and subsequent efforts to hold parties to precedent, considerable support for settlements that have come before the Council can be found in the settlement orders that have been entered, in the form of Council resolutions.

At pp. 42-43 ex parte communications are addressed. Consideration should be given to an accepted practice as has been described by Council attorney advisor Jeff Wilkerson, which holds that "pendency," as it is referred to in the applicable City Code section, refers to matters once they have been referred by the ALJ to the Council, which has taken them under advisement, and during that time, CURO is considered a designated agency of the Council.

It is mentioned that prohibitions against ex parte communications are common at regulatory commissions. The OIG's advocacy for transparency and fairness is well-taken. However, it could also be noted that commissions take various approaches to ex parte communications and the extent to which they should be allowed is a matter of policy for the Council to decide.

At pp 43-44 staff bifurcation is considered. To place the Council's practices in context consideration should be given to describing the extent to which advocacy and advisory duties are blurred at other regulatory entities.

Regarding the "Public Advocate" section at pp. 45-46, consideration should be given to clarifying the types of entities which could be legitimate candidates to perform as a public advocate.

Regarding p. 52 footnote 114, consideration should be given to providing definitions of "procedural" and "substantive" as the terms are used here, to describe regulatory issues and to exclude the hearing officer as having a role in the regulatory process. Consideration should be given to providing an explanation why Figure 16 does not contain the Council as the ultimate decision maker, and in addition, the ERSC, MISO, FERC, and the courts.

Consideration should be given to providing clarification regarding why CURO and the Advisors are not included in Figure 17.

At p. 53, Figure 18, it is suggested that parties to a case should never speak to Advisory Personnel, Councilmembers and their staff, or the Administrative Law Judge. Consideration should be given to providing an analysis of the extent to which the Council's unique role as a legislative body—in addition to being a regulatory entity—should be considered in the context of this recommendation. Consideration should be given to clarifying at what point a party becomes a "Party to Case," invoking the speaking prohibition. In order to place this recommendation in context, consideration should be given to providing a survey of other utility regulators, indicating the extent to which, and at what point in time, parties are prohibited from speaking with elected or appointed officials and staff, in those jurisdictions.

Thank you for your time and consideration in reviewing this response.

# NEW ORLEANS CITY COUNCIL MANAGEMENT RESPONSE FORM

OFFICE OF INSPECTOR GENERAL  
**CITY OF NEW ORLEANS**



## MANAGEMENT RESPONSE FORM

PLEASE COMPLETE THIS FORM AND RETURN AS SPECIFIED BELOW. SUPPLY YOUR RESPONSES IN THE SHADED BOXES.

PLEASE INDICATE YOUR AGREEMENT OR DISAGREEMENT WITH EACH OF THE FOLLOWING RECOMMENDATIONS BY SELECTING A RESPONSE FROM THE DROPODOWN BOX. IF YOU REJECT OR PARTIALLY ACCEPT THE RECOMMENDATION, PLEASE EXPLAIN WHY IN THE SPACE PROVIDED. PLEASE DESCRIBE EACH ACTION YOUR AGENCY WILL TAKE TO IMPLEMENT THE RECOMMENDATION, OR FIX THE PROBLEM, ALONG WITH THE NAME AND CONTACT INFORMATION OF THE PERSON(S) RESPONSIBLE FOR THE ACTION AND THE COMPLETION DATE (IF ONE IS ALREADY NOT PROVIDED).

PLEASE RETURN THIS COMPLETED FORM TO DEVANG PANCHAL AT [dpanchal@nolaig.org](mailto:dpanchal@nolaig.org) BY JUNE 12, 2015.

ENTER NAME HERE:

RECOMMENDATION #1 REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE: (SELECT ONE):
1. THE COUNCIL SHOULD RETAIN ITS REGULATORY AUTHORITY AT LEAST UNTIL THERE IS FURTHER CLARITY ABOUT THE DISSOLUTION OF THE SYSTEM AGREEMENT AND TRANSFER TO MISO.	JASON R WILLIAMS CHAIRMAN OF UCTTC PHONE: 504-658-1070 JASONWILLIAMS@NOLA.GOV	Accept
<b>IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #1, PLEASE EXPLAIN WHY:</b> THE COUNCIL ACCEPTS THIS RECOMMENDATION, BUT WOULD GO FURTHER. THE COUNCIL BELIEVES THAT IT HAS DONE AN EXEMPLARY JOB AS THE UTILITY REGULATORY BODY, A CONCLUSION SUPPORTED BY THE REPORT. MOREOVER, AS THE COUNCIL EXPECTED, THE REPORT CONFIRMS THAT THERE IS NO WASTE, FRAUD OR ABUSE IN THE SYSTEM. THEREFORE, GIVEN THE UNFORTUNATE HISTORY OF THE NEGATIVE IMPACT OF LPSC REGULATION FOR NEW ORLEANS RATEPAYERS, THE QUESTION OF WHO SHOULD BE THE UTILITY REGULATOR IN NEW ORLEANS SHOULD BE CONSIDERED SETTLED IN FAVOR OF KEEPING THE CURRENT STRUCTURE.		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #1 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
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Date:

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<b>RECOMMENDATION #2</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
2. THE COUNCIL SHOULD WORK COOPERATIVELY WITH THE LPSC ON SYSTEM AGREEMENT AND MISO ISSUES TO BENEFIT UTILITY CUSTOMERS IN BOTH REGULATORY JURISDICTIONS.	COUNCILMAN JASON R WILLIAMS 504-658-1070	Accept
<b>IF YOU REJECT OR PARTIALLY ACCEPT RECOMMENDATION #2, PLEASE EXPLAIN WHY:</b> THE COUNCIL ACCEPTS THIS RECOMMENDATION. THE COUNCIL HAS ALWAYS WORKED COOPERATIVELY WITH ALL STAKEHOLDERS IN THE BEST INTEREST ON THE NEW ORLEANS RATEPAYERS. THE COUNCIL TOOK THE LEAD IN BOTH SYSTEM AGREEMENT AND MISO NEGOTIATIONS TO PROTECT AGAINST THE RAILROADING OF NEW ORLEANS RATEPAYERS. BUT FOR THE COUNCIL'S EFFORTS NEW ORLEANS RATEPAYERS WOULD HAVE BEEN FORCED INTO BEARING UNFAIR COST UNDER A SINGLE TRANSMISSION PRICING ZONE (TPZ) WITH INADEQUATE GENERATION RESOURCES FOR THE FUTURE. AS A RESULT OF COUNCIL EFFORTS, WITH VITAL INPUT FROM ITS ADVISORS, A FAIR AND EQUITABLE AGREEMENT AMONG THE PARTIES IS CURRENTLY WITHIN REACH. TO ACHIEVE THIS END, THE COUNCIL AND ITS ADVISORS HAVE COMBINED COOPERATION WITH FORCEFUL ADVOCACY TO FOSTER THE PROCESS WHILE ALWAYS PROTECTING THE INTERESTS OF THE NEW ORLEANS RATEPAYERS.		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #2 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
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<b>RECOMMENDATION #3</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
3. THE COUNCIL SHOULD EXPLORE THE POSSIBILITY OF ENTERGY MERGING ELL ALGIERS WITH ENO.	THE UCTTC JASON R WILLIAMS, CHAIRMAN	Reject
<b>IF YOU REJECT OR PARTIALLY ACCEPT RECOMMENDATION #3, PLEASE EXPLAIN WHY:</b> THIS RECOMMENDATION IS MOOT. THE COUNCIL, THROUGH ITS ADVISORS, HAS FOR SEVERAL YEARS BEEN WORKING TO INCORPORATE ALGIERS INTO ENO TO CREATE A SINGLE ELECTRIC UTILITY SUBJECT TO THE SINGULAR REGULATION OF THE COUNCIL. THIS RECOMMENDATION IS NOT NOVEL, BUT LONG-SINCE DEVELOPED BY THE COUNCIL IN A MANNER FULLY BENEFICIAL TO ALL NEW ORLEANS RATEPAYERS. AN AGREEMENT TO BRING THIS MERGING TO FRUITION HAS BEEN STRUCK AND THE COUNCIL HAS RECENTLY APPROVED THE AGREEMENT AND THE PROCEDURE TO BRING THE MATTER TO CONCLUSION AT THE MAY 14, 2015 COMMITTEE MEETING.		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #3	RESPONSIBLE PERSON:	COMPLETION DATE:

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Date:

OR FIX THE PROBLEM:		
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<b>RECOMMENDATION #4</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
4. THE COUNCIL SHOULD EXPLORE THE POTENTIAL BENEFITS OF CONSOLIDATING ALL THREE ENTERGY COMPANIES OPERATING IN LOUISIANA INTO A SINGLE ENTITY.	JASON R WILLIAMS, CHAIRMAN OF UCTTC	Reject
<b>IF YOU REJECT OR PARTIALLY ACCEPT RECOMMENDATION #4, PLEASE EXPLAIN WHY:</b> THE COUNCIL REJECTS THIS RECOMMENDATION AS THEORETICAL AND NOT PRACTICAL. JUST AS NEW ORLEANS INTERESTS WOULD BE DWARFED BY THE REST OF THE STATE IF REGULATORY AUTHORITY WERE VESTED IN THE LPSC, COMBINING ENO WITH ELL/EGSL WOULD HAVE THE SAME EFFECT. HAVING A DISCREET ENTITY SOLELY FOCUSED ON PROVIDING SERVICE TO NEW ORLEANS IS EXTREMELY BENEFICIAL TO NEW ORLEANS RATEPAYERS. AN ELL/EGSL ENTITY WOULD NEVER BE AS RESPONSIVE TO LOCAL NEEDS IF NEW ORLEANS WAS A RELATIVELY SMALL PART OF ITS TOTAL CUSTOMER BASE. SEE ATTACHED FOR ADDITIONAL INFORMATION		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #4 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
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<b>RECOMMENDATION #5</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
5. THE COUNCIL SHOULD OFFICIALLY DESIGNATE A LEADER OF THE ADVISORY TEAM AND IN-HOUSE STAFF.	JASON R WILLIAMS CHAIRMAN OF UCTTC	Accept

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**IF YOU REJECT OR PARTIALLY ACCEPT RECOMMENDATION #5, PLEASE EXPLAIN WHY:** THE COUNCIL ACCEPTS THIS RECOMMENDATION FAVORABLY AS IT HAD ALREADY TAKEN SUCH ACTION PRIOR TO THIS REPORT AND WILL PLAN TO GO FURTHER. THE COUNCIL HAS DESIGNATED THE CHAIR OF THE UCTTC AS THE LEADER OF THE ADVISORY TEAM AND EFFECTIVE UNDER THE LEADERSHIP OF COUNCILMAN JASON WILLIAMS THE DIRECTOR OF CURO IS DESIGNATED THE IN-HOUSE STAFF LEAD.

DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #5 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
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<b>RECOMMENDATION #6</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
6. THE COUNCIL SHOULD DISCONTINUE SOME OF ITS CONTRACTS WITH OUTSIDE CONSULTANTS.	JASON R. WILLIAMS CHAIRMAN OF UCTTC	Partially Accept
<b>IF YOU REJECT OR PARTIALLY ACCEPT RECOMMENDATION #6, PLEASE EXPLAIN WHY:</b> THE COUNCIL ACCEPTS THIS RECOMMENDATION IN PART. SINCE MAY 2014, THIS COUNCIL AND THE CURRENT CHAIR OF THE UCTTC HAVE CONSISTENTLY EVALUATED THE NEED FOR A MIX OF CONSULTANTS. THE COUNCIL HAS RECENTLY REDUCED THE NUMBER OF ACCOUNTING FIRMS FROM TWO TO ONE. CONSULTANT CONTRACTS ARE AWARDED PURSUANT TO EXHAUSTIVE AND HIGHLY COMPETITIVE RFP PROCESS EVERY FIVE YEARS, WITH ANNUAL REVIEWS AND RENEWALS. UTILITY COMMITTEE MEMBERS WORK CLOSELY WITH THE UTILITY CONSULTANTS ALMOST ON A DAILY BASIS. THE PROCESS PROVIDES THE COMMITTEE AND ULTIMATELY THE COUNCIL WITH ABUNDANT REAL-WORLD EXPERIENCES IN DETERMINING THE EFFECTIVENESS OF THE ADVISORS.		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #6 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
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<b>RECOMMENDATION #7</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
7. THE COUNCIL SHOULD REDUCE SOME OF ITS CONTRACTS WITH OUTSIDE CONSULTANTS, INCLUDING DENTONS AND LEGEND.	JASON R WILLIAMS CHAIRMAN OF UCTTC	Reject
<b>IF YOU REJECT OR PARTIALLY ACCEPT RECOMMENDATION #7, PLEASE EXPLAIN WHY:</b> THE COUNCIL REJECTS THIS RECOMMENDATION. THE REPORT MAKES NO CASE FOR THIS RECOMMENDATION. IN FACT, THE ONE EXAMPLE USED WITH RESPECT TO DENTONS IS AN ENTIRELY BASELESS, FORCED CONCLUSION THAT WOULD PUT THE COUNCIL'S REGULATORY PROCESS AT RISK. SEE ATTACHED FOR ADDITIONAL INFORMATION		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #7 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
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<b>RECOMMENDATION #8</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
8. THE COUNCIL SHOULD ISSUE TOPIC AND/OR TASK-ORIENTED RFPs FOR OUTSIDE CONSULTANTS.	JASON R. WILLIAMS CHAIRMAN OF UCTTC	Partially Accept
<b>IF YOU REJECT OR PARTIALLY ACCEPT RECOMMENDATION #8, PLEASE EXPLAIN WHY:</b> THE COUNCIL ACCEPTS THIS RECOMMENDATION IN PART. THE COUNCIL BELIEVES THAT THERE CAN BE DISCREET INSTANCES THAT ARE SUITED TO "ISSUE TOPIC AND/OR TASK-ORIENTED RFPs." HOWEVER, THE COUNCIL DOES NOT BELIEVE THAT THIS IS A SUBSTITUTE FOR A TEAM OF CONSULTANTS WHO ARE UNIQUELY DEDICATED TO THE COUNCIL AND ITS REGULATORY PROCESS. THE SUCCESS OF THE CURRENT PROCESS IS CONFIRMED IN THE REPORT AND IN THE EXPERIENCE OF THE COUNCIL. NEW ORLEANS HAS AMONG THE LOWEST ELECTRIC RATES IN THE COUNTRY. NEW ORLEANS HAS A MODEL ENERGY EFFICIENCY PROGRAM IN A STATE THAT RESISTS SUCH PROGRAMS. NEW ORLEANS HAS STOOD FIRM AGAINST TERMINATING THE ENO SYSTEM AGREEMENT IN A MANNER THAT WOULD CRUSH LOCAL RATEPAYERS. NEW ORLEANS UTILITY REGULATION HAS BEEN SUCCESSFUL FOR RATE PAYERS AND IN TERMS OF ENERGY EFFICIENCY. THIS RECOMMENDATION IS A SOLUTION IN SEARCH OF A PROBLEM. CERTAINLY THIS SHOULD BE OUR FOCUS.		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #8	RESPONSIBLE PERSON:	COMPLETION DATE:

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<b>RECOMMENDATION #9</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
9. THE COUNCIL SHOULD INCREASE ITS INTERNAL REGULATORY STAFF.	JASON R WILLIAMS CHAIRMAN OF UCTTC	Accept
<b>IF YOU REJECT OR PARTIALLY ACCEPT RECOMMENDATION #9, PLEASE EXPLAIN WHY:</b> THE COUNCIL ACCEPTS THIS RECOMMENDATION IN PART. THE COUNCIL ACCEPTS THAT ARE OPPORTUNITIES TO BENEFICIALLY INCREASE ITS REGULATORY STAFF. IN FACT, THE COUNCIL HAS BEEN CONSIDERING WAYS TO DO THIS CONSISTENT WITH CIVIL SERVICE REQUIREMENTS AND IN THE FACE OF CERTAIN MARKET REALITIES. THE COUNCIL WILL CONTINUE TO STUDY THIS RECOMMENDATION.		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #9 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
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<b>RECOMMENDATION #10</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
10. THE COUNCIL SHOULD INVEST IN TRAINING OF MEMBERS OF THE UCTTC AND INTERNAL REGULATORY STAFF.	JASON R WILLIAMS CHAIRMAN OF UCTTC	Accept

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IF YOU REJECT OR PARTIALLY ACCEPT RECOMMENDATION #10, PLEASE EXPLAIN WHY: SINCE MAY 2014 THE NEW COMMITTEE CHAIR AND STAFF ALREADY SOUGHT OUT AND RECEIVED TRAINING FROM VARIOUS SOURCES: UTILITY COMMISSIONERS/WALL STREET DIALOGUE, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, ENERGY BAR ASSOCIATION CONFERENCE, AND ORGANIZATION OF MISO STATES TRAINING. THE COUNCIL WILL STUDY THE COSTS AND BENEFITS OF FURTHER TRAINING SPONSORED BY THE COUNCIL EXCLUSIVELY FOR MEMBERS AND STAFF. THE COUNCIL IS CERTAINLY PLEASED TO LEARN THAT ITS EARLY ACTION PRIOR TO THIS REPORT IS SUPPORTED BY THE OIG.

DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #10 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
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RECOMMENDATION #11 REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
11. THE COUNCIL SHOULD RECOVER ALL REGULATORY COSTS FROM ENO AND ELL ALGIERS.	JASON R WILLIAMS CHAIRMAN OF UCTTC	Accept
IF YOU <u>REJECT OR PARTIALLY ACCEPT</u> RECOMMENDATION #11, PLEASE EXPLAIN WHY: THE COUNCIL ACCEPTS THIS RECOMMENDATION. THE COUNCIL RECEIVES THIS INFORMATION POSITIVELY AND WILL RESEARCH TO SEE IF THIS RECOMMENDATION CAN PROPERLY BE ACCOMPLISHED.		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #11 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
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RECOMMENDATION #12 REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
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<b>12.</b> THE COUNCIL SHOULD CREATE AND IMPLEMENT A STANDARD SET OF BILLING GUIDELINES AND REQUIRE OUTSIDE CONSULTANTS TO COMPLY WITH ITS REQUIREMENTS.	JASON R WILLIAMS CHAIRMAN OF UCTTC	Accept
<b>IF YOU REJECT OR PARTIALLY ACCEPT RECOMMENDATION #12, PLEASE EXPLAIN WHY:</b> THE COUNCIL ACCEPTS THIS RECOMMENDATION. THE COUNCIL BELIEVES THAT FURTHER STUDY IS NECESSARY TO DETERMINE HOW TO STRUCTURE AND IMPLEMENT THIS RECOMMENDATION, BUT SUPPORTS CREATING AND IMPLEMENTING A STANDARD SET OF BILLING GUIDELINES.		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #12 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
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12.3		

<b>RECOMMENDATION #13</b> REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
13. THE COUNCIL'S HEARING OFFICER SHOULD FUNCTION AS AN ALJ AND PROVIDE COUNCILMEMBERS WITH RECOMMENDATIONS ON DISPUTED REGULATORY MATTERS.	JASON R WILLIAMS CHAIRMAN OF UCTTC	Reject
<b>IF YOU REJECT OR PARTIALLY ACCEPT RECOMMENDATION #13, PLEASE EXPLAIN WHY:</b> THE COUNCIL REJECTS THIS RECOMMENDATION. THE COUNCIL IS A LEGISLATIVE BODY AND DERIVES ITS REGULATORY AUTHORITY DIRECTLY FROM THE HOME RULE CHARTER. THIS SOMEWHAT HYBRID SITUATION HAS BEEN LEGALLY TESTED OVER THE YEARS AND THE CURRENT REGULATORY REGIME, INCLUDING HEARING FUNCTION, HAS BEEN UPHELD BY THE LOUISIANA SUPREME COURT. MOREOVER, THIS IS ANOTHER RECOMMENDATION IN SEARCH OF A PROBLEM. THERE HAVE BEEN NO STAKEHOLDER COMPLAINTS WITH RESPECT TO THE "HEARING OFFICER" CONFIGURATION.		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #13 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
13.1		
13.2		
13.3		

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\*\*\*\*\*NOTE – Recommendations 14 - 16 apply to the Administration\*\*\*\*\*

<b>RECOMMENDATION #17 REQUIRING IMMEDIATE ACTION:</b>		<b>RESPONSIBLE PERSON: (NAME AND CONTACT)</b>	<b>RESPONSE CHOICE (SELECT ONE):</b>
17. THE COUNCIL SHOULD STRENGTHEN EX PARTE RULES.		JASON R WILLIAMS CHAIRMAN OF UCTTC	Reject
<b>IF YOU REJECT OR PARTIALLY ACCEPT RECOMMENDATION #17, PLEASE EXPLAIN WHY:</b> THE COUNCIL REJECTS THIS RECOMMENDATION FOR THE REASONS STATED IN NUMBER 13 ABOVE BECAUSE IT'S CURRENT RULES ARE ADEQUATE AND MORE IMPORTANTLY EFFECTIVE. THE COUNCIL IS A LEGISLATIVE BODY, NOT A TRIBUNAL. COUNCIL MEMBERS CAN AND SHOULD HEAR FROM ALL CONSTITUENTS AND STAKEHOLDERS ON MATTERS OF CONCERN TO THEM. AGAIN, THIS MODEL HAS NOT GENERATED COMPLAINTS OR PROBLEMS. COUNCIL MEMBERS CAN REGULARLY HEAR FROM CONSUMER ADVOCATES INTERVENORS (E.G., ALLIANCE FOR AFFORDABLE ENERGY) AS WELL AS THE REGULATED UTILITIES (ENO/ELL), OR THE UTILITY ADVISORS. SEE ATTACHED FOR ADDITIONAL INFORMATION			
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #17 OR FIX THE PROBLEM:		RESPONSIBLE PERSON:	COMPLETION DATE:
17.1			
17.2			
17.3			

<b>RECOMMENDATION #18 REQUIRING IMMEDIATE ACTION:</b>		<b>RESPONSIBLE PERSON: (NAME AND CONTACT)</b>	<b>RESPONSE CHOICE (SELECT ONE):</b>
18. THE COUNCIL SHOULD BIFURcate ITS REGULATORY PERSONNEL.		JASON R WILLIAMS CHAIRMAN OF UCTTC	Reject
<b>IF YOU REJECT OR PARTIALLY ACCEPT RECOMMENDATION #18, PLEASE EXPLAIN WHY:</b> THE COUNCIL REJECTS THIS RECOMMENDATION. THIS RECOMMENDATION WOULD NECESSARILY INCREASE THE SIZE OF THE STAFF AND CREATE A BUREAUCRACY WITHOUT ANY COMMENSURATE INCREASE IN PRODUCTIVITY. THE CURRENT SYSTEM WORKS WELL WITHOUT BIFURCATION. THE CURRENT SYSTEM HAS BEEN LEGALLY TESTED AND APPROVED. THE RECOMMENDATION PRESUMES A COMPLETELY DIFFERENT REGULATORY SYSTEM THAT DOES NOT FIND ITS AUTHORITY IN A HOME RULE CHARTER THAT KNOWINGLY INVESTS THE REGULATORY FUNCTION IN THE LEGISLATIVE BODY. THERE HAVE BEEN NO COMPLAINTS OR PROBLEMS RESULTING FROM A UNITARY STAFF.			

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DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #18 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
18.1		
18.2		
18.3		

RECOMMENDATION #19 REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
19. THE COUNCIL SHOULD ESTABLISH A PROCESS FOR REGULAR EFFICIENCY AND PERFORMANCE EVALUATIONS OF THE GAS AND ELECTRIC UTILITIES UNDER ITS REGULATORY JURISDICTION.	JASON R WILLIAMS CHAIRMAN OF UCTTC	Accept
IF YOU <u>REJECT</u> OR <u>PARTIALLY ACCEPT</u> RECOMMENDATION #19, PLEASE EXPLAIN WHY: THE COUNCIL ACCEPTS THIS RECOMMENDATION. THE COUNCIL WILL STUDY AND DEVELOP A PROCESS FOR REGULAR EFFICIENCY PERFORMANCE EVALUATIONS OF THE REGULATED UTILITIES.		
DESCRIBE THE ACTIONS YOU WILL TAKE TO IMPLEMENT RECOMMENDATION #19 OR FIX THE PROBLEM:	RESPONSIBLE PERSON:	COMPLETION DATE:
19.1		
19.2		
19.3		

RECOMMENDATION #20 REQUIRING IMMEDIATE ACTION:	RESPONSIBLE PERSON: (NAME AND CONTACT)	RESPONSE CHOICE (SELECT ONE):
20. THE COUNCIL SHOULD DEVELOP AND IMPLEMENT AN ELECTRONIC FILING SYSTEM AND POST DOCUMENTS AND INFORMATION RELATED TO REGULATORY MATTERS ON AN IMPROVED WEBSITE.	JASON R WILLIAMS CHAIRMAN OF UCTTC	Accept

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## RESPONSE FROM THE CITY'S EXECUTIVE BRANCH

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CHIEF ADMINISTRATIVE OFFICE  
CITY OF NEW ORLEANS

Mitchell J. Landrieu  
Mayor

Andrew D. Kopplin  
First Deputy Mayor &  
Chief Administrative Officer

June 15, 2015

Mr. Edouard Quatrevaux  
Inspector General  
City of New Orleans  
525 St. Charles Avenue  
New Orleans, LA 70130

**Re: New Orleans Utilities Regulation**

Dear Mr. Quatrevaux:

The Administration is in receipt of the Office of Inspector General's draft, "New Orleans Utilities Regulation". The report reviews the system of utility regulation in the city and examines how the regulatory activities are arranged within and between the legislative and executive branches of City government.

As most of the recommendations in the report address issues within the purview of the legislative branch, I will focus in this response on the specific recommendations regarding executive branch departments.

Recommendation 14 is that the Director of Finance should review how public advocates function at other regulatory commissions to develop a detailed plan for how the City's Public Advocate's office should be structured and staffed. The City has already taken proactive steps to represent the public's interest through initiatives such as the Rough Production Cost Equalization (RPCE) Remedy funding of over \$14 million to install energy efficient LED streetlights throughout City. The City agrees that a more formal and routine role for public advocacy may be warranted and will undertake such a review, and would expect that any related costs will be borne by Entergy, as per Recommendation 11.

Recommendation 15 notes that the City needs staff or contractors to represent its interests as a utility customer. The City has acted proactively in the last few years as a customer, most particularly through discussions with Entergy directly through the CAO's office and DPW to ensure that streetlight billing is accurate and fully reflects the city's investment in energy-saving technology. The Department of Finance will propose a budget initiative for a lawyer and an engineer to staff such an effort in 2016.

1300 PERDIDO STREET | SUITE 9E06 | NEW ORLEANS, LOUISIANA | 70112  
PHONE: 504.658.8600 | FAX: 504.658.8648



MR. EDOUARD QUATREVAUX  
June 15, 2015  
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Recommendation 16 recommends that the City should undertake more regular audits, at Entergy's expense, and the new staff proposed under recommendation 15 will manage such audits. The City will confer with the Council regarding the period of appointment of any auditors since, under Section 158-2, the Council must deem such auditors to be necessary. Additionally, the City is unable to engage auditors without the Council's consent. The City has conducted investigations of utilities from time to time and has submitted formal recommendations to the City Council on occasion regarding utility matters.

This report addresses a critical issue of importance to the city's residents as both ratepayers and, as the report notes, as taxpayers who fund the city's costs as a major utility customer itself. Thanks again for your review and recommendations.

Sincerely,



Andrew D. Kopplin  
First Deputy Mayor and Chief Administrative Officer  
City of New Orleans

cc: Sharonda Williams, City Attorney  
Cedric Grant, Executive Director, SWB  
Norman Foster, Director of Finance  
Beverley Gariepy, Deputy Director of Finance  
Mark Jernigan, Director of Department of Public Works  
Eric Granderson, Mayor's office